Title:
Florida's CHOICE Act Reshapes the Rules on Noncompetes and Garden Leave Agreements

Florida's new Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act, a sweeping statutory overhaul that significantly expands how employers in Florida may use noncompete and garden leave agreements, is expected to take effect on July 1, 2025.[1] The CHOICE Act provides a new framework for enforcing noncompete and garden leave agreements with restrictions lasting up to four years—but only where employers meet specific conditions tied to compensation thresholds, written disclosures, and notice requirements.

What Does the CHOICE Act Do?
The CHOICE Act sets criteria for "covered garden leave agreements" and "covered noncompete agreements" with "covered employees" and then addresses how and in what circumstances covered garden leave and covered noncompete agreements are enforceable.
A covered agreement that meets the criteria of the CHOICE Act is presumed valid and enforceable. The CHOICE Act allows for restrictions of up to four years and imposes no other reasonableness requirements, theoretically allowing for nationwide or international enforcement of broadly written restrictions that last for up to four years.
The CHOICE Act requires courts to grant injunctive relief if a covered employee breaches a compliant agreement unless very narrow exceptions apply.

Who Is a Covered Employee?
The CHOICE Act applies only to "covered employees." A "covered employee" is any employee or individual contractor (other than a healthcare practitioner) who earns or is reasonably expected to earn a salary greater than twice the annual mean wage of:

1. the Florida county where the employer's principal place of business is located if the employer has its principal place of business in Florida or
2. the Florida county in which the employee resides if the employer's principal place of business is not in Florida.

Salary includes the fair market value of any benefit other than health care benefits or retirement benefits. Salary does not include discretionary incentives or awards or anticipated but indeterminable compensation like bonuses or commissions. This wage test means the CHOICE Act will not apply to (or change existing Florida law relating to) lower-earning individuals.

What Is a Covered Garden Leave Agreement?
To qualify as a "covered garden leave agreement" under the CHOICE Act, a garden leave agreement must meet the following criteria:

1. The parties agree to provide up to (but no more than) four years' advance notice of termination of the employment relationship;
2. The employee agrees not to resign before the end of the notice period;
3. The employer agrees to retain the covered employee for the duration of the notice period; and
4. The employer agrees to pay the covered employee the same salary and benefits during the notice period that the employee received immediately prior to the notice.

The employer does not need to pay discretionary incentive compensation or benefits or have the employee perform any work during the notice period. Thus, a covered garden leave agreement can require an employee to give up to four years of notice of termination of employment as long as the other criteria for enforceability of a covered garden leave agreement are met.

What Is a Covered Noncompete Agreement?

To qualify as a "covered noncompete agreement" under the CHOICE Act, a noncompete agreement must provide that the parties agree that for a period of up to four years after termination of employment, the employee will not:

1. Work for another business within the geographic region specified in the noncompete in which the employee would provide services similar to those the employee provided to the current employer; or
2. Work for another business within the geographic region specified in the noncompete in which it is reasonably likely that the employee would use the employer's confidential information or customer relationships.

Thus, a covered noncompete agreement can require an employee not to compete with the employer within a specified geographic region for up to four years after termination of employment as long as the other criteria for enforceability of a covered noncompete agreement are met.

What Is the Scope of the CHOICE Act's Applicability?

The CHOICE Act applies to all covered garden leave and noncompete agreements with any employee whose primary place of work is in Florida. The statute supersedes and voids any contractual choice of law provisions that purport to apply the law of a different jurisdiction to a covered garden leave or noncompete agreement with an employee whose primary place of work is in Florida.

The CHOICE Act also applies to all covered garden leave and noncompete agreements between a covered employee and an employer whose principal place of business is in Florida if the agreement states that it is governed by the laws of Florida. Thus, the statute purports to apply to employees located outside of Florida as long as the employer's principal place of business is in Florida and the agreement has a Florida choice of law provision. It remains to be seen if courts in other states would apply Florida law in these circumstances.

What are the Other Requirements for Enforceability?

To benefit from the CHOICE Act's presumptions and enforcement powers, employers must comply with several additional requirements.

A covered garden leave agreement, is enforceable if:

1. The employee was advised in writing of the right to seek counsel before executing the agreement;
2. The employee received the proposed agreement at least seven days before an offer of employment expires or (for existing employees) before the garden leave offer expires;
3. The employee acknowledged in writing receipt of confidential information or customer relationships;
4. The agreement provides that the employee does not have to provide services to the employer after 90 days;

5. The agreement provides that the employee may engage in nonwork activities during the remainder of the notice period;
6. The agreement provides that the employee may, with permission of the employer, work for another employer during the remainder of the notice period notice; and
7. The agreement provides that the notice period may be reduced if the employer provides at least 30 days' notice to the employee.

Thus, a covered garden leave agreement must be shared with the employee in advance and the employee must be advised in writing to consult with counsel. A covered garden leave agreement can require up to four years of notice of termination of employment, but it must state that the employee does not have to provide any further services to the employer after 90 days from the date of notice of termination. Absent the employer's consent, the employee may not work for another employer during the entirety of the notice period. The agreement must provide that the employer has the right to shorten the notice period and end the employee's employment as long as the employer provides at least 30 days' notice.

A covered noncompete agreement is enforceable if:

1. The employee was advised in writing of the right to seek counsel before executing the agreement;
2. The employee received the proposed agreement at least seven days before an offer of employment expires or (for existing employees) before the garden leave offer expires;
3. The employee acknowledged in writing that the employee will receive confidential information or customer relationship; and
4. The agreement provides that the noncompete is reduced day-for-day by any nonworking portion of a notice period in a covered garden leave agreement.

Thus, a covered noncompete agreement must be shared with the employee in advance and the employee must be advised in writing to consult with counsel. If the employee is also subject to a covered garden leave provision, then the length of the noncompete must be reduced by any portion of the garden leave notice period in which the employee is not actively providing services to the employer. This prevents an employer from having a four-year notice period followed by an additional four-year noncompete period.

The CHOICE Act does not impose any reasonableness requirements beyond the four-year limit on the length of the noncompete. The Act does not on its face require a noncompete to be reasonable in scope or geographic reach as long as it complies with the other criteria in the Act (including specifying the geographic reach of the noncompete).

Remedies and Enforcement

The CHOICE Act's most powerful feature is its injunctive enforcement regime which imposes a presumption of enforceability, severely limits the departing employee's grounds for opposing the injunction, and puts the burden on the employee to demonstrate by clear and convincing evidence that one of the narrow statutory grounds for modifying or dissolving an injunction exists.

A court *must* issue a preliminary injunction enforcing a covered agreement and precluding a covered employee from "providing services to any business, entity or individual other than the covered employee." The employee can seek to dissolve or modify the injunction only by proving, by clear and convincing evidence based on nonconfidential information, one of the following:

For a Covered Garden Leave Agreement

- The employee will not perform work for the new employer that is similar to services the employee provided to the current employer or use the employer's confidential information or customer relationships; or
    - The employer failed to pay the required salary and benefits during the notice period and has had a reasonable opportunity to cure that failure.

For a Covered Noncompete Agreement

- The employee will not perform work for the new employer that is similar to services the employee provided to the current employer or use the employer's confidential information or customer relationships;
    - The employer failed to pay the consideration provided for in the noncompete agreement and has had a reasonable opportunity to cure that failure; or
    - The new employer is not engaged in or planning to engage in business similar to that engaged in by the current employer in the geographic area specified in the noncompete.

The CHOICE Act's enforcement regime stands in stark contrast to the existing standard for obtaining injunctive relief in Florida and virtually all other U.S. jurisdictions that recognize garden leave and noncompete agreements. Generally, injunctive relief has been viewed as an act of equitable discretion, with courts traditionally weighing the plaintiff's likelihood of success, irreparable harm to the plaintiff absent an injunction, the potential harm to all parties, and the public interest. Courts traditionally examine whether a post-employment restriction is narrowly tailored and reasonable in duration, geographic reach and scope in light of the employer's legitimate interest in protecting its confidential information, trade secrets, or unique client relationships. The CHOICE Act, however, seemingly eliminates all of these standards by requiring a court to enjoin the employee and any business engaging the employee whenever an employer seeks to enforce a covered agreement.

In addition, if an employee or contractor engages in "gross misconduct," an enforcing employer may reduce the salary or benefits provided to the employee or "take other appropriate action" without breaching the covered agreement.

An employer who prevails in its enforcement action is entitled to recover monetary damages and attorney's fees.

Does the CHOICE Act Impact Agreements that Are Not "Covered" Agreements?

The CHOICE Act specifically provides that it does not affect or limit the enforceability of any other agreement. If a noncompete or garden leave agreement is not a "covered garden leave agreement" or "covered noncompete agreement," then it should be unaffected by the statute and would be governed by preexisting Florida law.

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Florida's CHOICE Act marks a significant shift in the legal landscape for restrictive covenants, giving Florida employers and other employers with employees in Florida access to broader and longer-lasting options to protect their business interests. It remains to be seen whether employees in Florida or working for Florida businesses will sign lengthy garden leave or noncompete agreements and how courts will reconcile the CHOICE Act with Florida's current noncompete statute, which remains in force, or other states' noncompete laws. It is imperative that employers (and employees) keep a close eye on this evolving and increasingly complex legal environment.

[1] UPDATE: Governor DeSantis did not sign or veto the bill, so the Florida CHOICE Act became law without the governor's signature on July 1, 2025.