Sunshine and Strong Non-Competes: The Florida CHOICE Act

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Recently, the Florida legislature took steps to solidify the state as friendly grounds for non-compete agreements and restrictive covenants through the enactment of the Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act. Becoming law without Governor Ron DeSantis's signature as of July 3, 2025, the CHOICE Act immediately adds to Florida's existing non-compete landscape by allowing employers to use statutorily defined non-compete agreements and garden leave agreements to create enforceable restrictive covenants with certain employees.

What's the Point?

The CHOICE Act's stated intent is to promote strong legal protections in contracts between employers and employees and to provide employers with predictability in the enforcement of a qualifying agreement. As such, the CHOICE Act will allow employers to protect their confidential information and client relationships for up to four years through the use of "covered garden leave agreements" or "covered non-compete agreements" with certain "covered" employees.

Who's Covered?

The CHOICE Act applies to all "covered employers," i.e., any entity or individual who employs or engages a "covered employee." Under the CHOICE Act, a covered employee is an employee or contractor who earns or is reasonably expected to earn a salary greater than twice the annual mean wage of the county in which the employer's principal place of business is located, or for out-of-state employers, the county in which the employee resides.

Importantly, the CHOICE Act only applies to covered agreements with covered employers whose principal place of business is in Florida or a covered employee who maintains a primary place of work in Florida.

The CHOICE Act does not apply to any healthcare practitioners licensed under Florida law, though this exclusion does not affect such employees' coverage under Florida Statutes Sections 542.335 and 542.336's non-compete provisions, which remain unchanged by the CHOICE Act.

What are the Remedies?

The most notable aspects of the CHOICE Act are the remedies for breach of covered non-compete and garden leave agreements. For example, the CHOICE Act provides that, upon application and establishment of a covered garden leave or non-compete agreement by an employer, the court *must* issue a preliminary injunction enforcing the agreement, which may thereafter only be dissolved or modified if the covered employee (or new employer) can meet the burdens set forth in the CHOICE Act by a heightened clear and convincing evidence standard of proof. In addition, the CHOICE Act allows for a prevailing party to recover all available monetary damages (including reasonable attorney's fees and costs) in addition to injunctive relief. Lastly, if a covered employee has engaged in "gross misconduct" against an employer, the CHOICE Act permits that employer to reduce a covered employee's salary or benefits or take other "appropriate action" against a covered employee during the period when the restrictive obligations are in effect – all without breaching the applicable garden leave or non-compete agreement.

What About Other Laws?

Another significant aspect of the CHOICE Act is its explicit intent to control over other contradictory laws. Presumably in response to recent efforts outside of Florida to curb non-compete agreements, the CHOICE Act requires that its provisions and conditions apply to covered garden leave and non-compete agreements regardless of whatever other conflicting laws might exist. The CHOICE Act also makes clear that it does not limit the enforceability of other agreements between employers and employees, and it does not restrain any rights under Florida's existing non-compete statutory scheme (i.e., Florida Statute § 542.335).

What's a Covered Garden Leave Agreement?

Under the CHOICE Act, "covered garden leave agreements" are those written agreements between an employer and a covered employee in which an employer agrees to provide up to four years of paid advance notice before terminating a covered employee. During this "notice period," the employer pays the covered employee the same salary and benefits (but not discretionary compensation) received just before the notice period began. In exchange, the covered employee agrees not to resign before the end of the notice period.

Substantively, a covered garden leave agreement must acknowledge the covered employee's receipt of confidential information or access to customer relationships, and it must contain terms advising that:

- The covered employee has been given at least seven days to consider the agreement before the offer expires;
- The covered employee has the right to seek legal counsel before signing the agreement;
- After the first 90 days of the notice period, the covered employee need not perform any work for the employer;
- The covered employee may engage in non-work activities at any time during the notice period, including during normal business hours;
- The covered employee may, with the permission of the employer, work for another employer during the notice period while still employed by the employer; and
- The employer may reduce the garden leave notice period at any time during the notice period upon 30 days' advance written notice to the covered employee.

What's a Covered Non-Compete Agreement?

For purposes of the CHOICE Act, a "covered non-compete agreement" is a written agreement that, for a period of up to four years and within a specified geographic area, prohibits a covered employee from assuming any role with or for another business, entity, or individual in which (A) it is reasonably likely that the covered employee would use the employer's confidential information or customer relationships, or (B) the covered employee would provide services similar to those provided by the employer during the three years before the end of the non-compete period.

Like covered garden leave agreements, covered non-compete agreements under the CHOICE Act must acknowledge in writing the covered employee's receipt of confidential information or access to customer relationships and allow for a similar seven-day consideration period. Covered non-compete agreements must also alert the covered employee to his or her right to legal counsel before signing the agreement.

Notably, the CHOICE Act prohibits an employer from stacking garden leave and non-compete periods, meaning that the non-compete period is reduced day-for-day by any nonworking portion of the garden leave notice period if an employer utilizes both types of agreements for the same employee.

Now What?

Employers with employees in Florida should be proactive and examine their existing non-compete agreements both for compliance with existing Florida non-compete law and to ascertain whether a shift to CHOICE Act coverage makes sense. If new or enhanced protections are warranted or desired, then an employer should think about what model, i.e., covered garden leave agreements or non-compete agreements, best suits the employer's business needs and what logistical considerations might be involved in rolling out new CHOICE Act compliant agreements, including how to communicate the need for such new agreements and restrictions with employees.

If you have any questions about the CHOICE Act, please contact Carlyn E. Hazelip (chazelip@lippes.com), Michael J Lufkin (mlufkin@lippes.com), Robert G. Riegel, Jr. (rriegel@lippes.com), or any member of our Employment Practice Team.

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