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Labor & Employment Alert

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Florida enacts CHOICE Act

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The law provides Florida employers with new framework for employment agreements and noncompetes.



What's the impact?

- Florida's new CHOICE Act, effective July 1, 2025, sets clear rules for garden leave and noncompete agreements, offering predictability for employers and employees.
- The Act requires written agreements, advance notice, and legal counsel advice, with strict criteria for enforceability and remedies.

Florida has enacted significant amendments to its employee mobility laws through the Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act, effective July 1, 2025. In a move that lets employers bask in the glow of certainty, the Sunshine State has illuminated a new path for garden leave and noncompete agreements. The CHOICE Act introduces a robust statutory framework that offers clarity, predictability, and enhanced protection for business interests.

Scope and applicability

The CHOICE Act applies to “covered employees” — those earning more than twice the annual mean wage of the relevant Florida county, excluding healthcare practitioners. Covered employers are entities or individuals employing such employees. The Act governs both garden leave and noncompete agreements where the employee’s primary place of work is in Florida or where the employer’s principal place of business is in Florida and the agreement is governed by Florida law.

Key definitions

- / **Covered Garden Leave Agreement:** A written agreement allowing an employer to end an employee’s active service while continuing salary and benefits for up to four years (the “notice period”), in exchange for the employee’s commitment not to work elsewhere without employer approval.
- / **Covered Noncompete Agreement:** A written agreement restricting an employee from taking on similar roles or using confidential information for up to four years post-employment, in a specified geographic area.

Notice and execution requirements

Both garden leave and noncompete agreements must:

- / Be in writing.
- / Clearly advise the employee, in writing, of the right to seek independent legal counsel before signing.
- / Be provided to the employee at least seven days before the offer expires.
- / Include a written acknowledgment by the employee regarding receipt of confidential information or responsibility for client relationships.

In addition, garden leave agreements must state that: (1) the employee is not required to work beyond the first 90 days of the notice period; (2) the employee may engage in non-work activities during the notice period; (3) the employee may work for another employer during the notice period with the employer’s permission; and (4) the notice period may be reduced if the employer gives 30 days’ advance notice in writing.

Enforceability and remedies

The CHOICE Act makes clear that properly executed garden leave and noncompete agreements are not considered unlawful restraints of trade under Florida law, provided statutory requirements are met.

For both agreement types:

- / Courts are required to issue preliminary injunctions to enforce the agreements on application by the employer, unless the employee can establish by clear and convincing evidence that they will not perform similar work or use confidential information, or that the employer has failed to provide required compensation.
- / Confidential information submitted to the court must be filed under seal.
- / Prevailing parties are entitled to recover reasonable attorney fees and costs.
- / Employers may reduce salary or benefits during the notice or noncompete period if the employee engages in gross misconduct against the employer.

Practical guidance for employers

With the CHOICE Act shining a ray of enforceability on restrictive covenants, Florida employers have a unique opportunity to safeguard their business interests. Here are ways to make the most of this new framework.

REVIEW AND UPDATE EXISTING AGREEMENTS

- / Audit current garden leave and noncompete agreements for compliance with the CHOICE Act's definitions, notice, and execution requirements.
- / Revise templates to ensure all statutory disclosures and acknowledgments are included.

IMPLEMENT ROBUST ONBOARDING AND OFFBOARDING PROCESSES

- / Integrate the required notice and counsel advisement into hiring and exit procedures.
- / Provide agreements well before employment offers or terminations to meet the seven-day notice requirement.

MONITOR COMPENSATION THRESHOLDS

- / Regularly review employee compensation to determine who qualifies as a "covered employee" under the Act.

PREPARE FOR ENFORCEMENT

- / Establish protocols for seeking preliminary injunctions and protecting confidential information in court proceedings.
- / Be prepared to demonstrate compliance with all statutory requirements to maximize enforceability.

CONSIDER STRATEGIC USE

- / Evaluate whether garden leave or noncompete agreements are appropriate for key roles, particularly where client relationships or proprietary information are at risk.
- / Balance business protection with employee relations and retention strategies.

The CHOICE Act's impact

The CHOICE Act's detailed notice, execution, and enforcement provisions bring clarity and predictability to Florida employers and employees regarding the use of noncompete and garden leave agreements. Employers in Florida and employers with Florida-based employees should consider whether rolling out garden leave and noncompete agreements could advance their business interests, especially in industries where revenues may be affected by departing employees engaging in competitive business.

For further guidance or assistance in implementing compliant agreements, please contact your Nixon Peabody attorney or:

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