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Insights

Florida's Choice Act Enhances Employer Enforcement of Noncompete Agreements

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The proposed Florida Contracts Honoring Opportunity, Investment, Confidentiality and Economic Growth (CHOICE) Act marks a substantial development in Florida's treatment of noncompete agreements.

Designed to complement and, in some cases, supersede the existing statutory framework, the CHOICE Act introduces a new employer-friendly law to enhance the enforceability of certain noncompete agreements and implements new standards specifically tailored to high-earning employees.

Currently presented before Gov. Ron DeSantis, the CHOICE Act is scheduled to take effect July 1, 2025.

Current Noncompete Law

Generally, Section 542.335, Fla. Stat., authorizes the enforcement of noncompete agreements that are reasonable in time, area, and line of business to protect one or more legitimate business interests of the employer. This framework necessarily results in courts evaluating reasonableness of scope and duration on a case-by-case basis without a statutory requirement for preliminary injunctive relief while the issues are litigated.

The CHOICE Act

The CHOICE Act adds a new law: Section 542.45, Fla. Stat., which creates a bifurcated system, because Section 542.335 will continue to apply to noncompete agreements that are not governed by the new law.

Section 542.45 exclusively governs noncompete agreements involving "covered employees" and "covered employers," as those terms are defined in the statute.

- "Covered employees" mean individuals who earn or are reasonably expected to earn a salary greater than twice the annual mean wage of

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the county in Florida in which the covered employer has its principal place of business, or the county in Florida in which the employee resides if the covered employer's principal place of business is not in Florida. A noncompete agreement for any individual whose income does not meet these requirements will be subject to Section 542.335.

- A "covered employee" specifically excludes certain health care practitioners, such as chiropractors, nurses (including ARNPs and CNAs), and mental health practitioners and counselors, like psychologists and psychotherapists.
- "Covered employers" mean any entity or individual who employs or engages a covered employee.

Noncompete Agreements

Under the CHOICE Act, noncompete agreements of up to four (4) years are presumed enforceable if drafted in accordance with the newly proposed statute, and employers are entitled to preliminary injunctive relief upon a showing of likely breach. This shifts the burden to the covered employee to prove unenforceability and why the injunction is not warranted. It's anticipated that this presumption of enforceability will help streamline the judicial process for businesses and provide better certainty for both parties.

An enforceable noncompete agreement under the CHOICE Act must satisfy the following requirements:

- The noncompete period must not exceed four years.
- The covered employee must be advised in writing of their right to seek legal counsel prior to entering into the covered noncompete agreement and have at least seven days to consider the offer prior to its expiration.
- The covered employee must acknowledge, in writing, that they will receive confidential information or customer relationships over the course of their employment.
- The noncompete period is reduced day for day by any nonworking portion of the notice period under an applicable covered garden leave agreement.

Garden Leave Agreements

The CHOICE Act also gives covered employers the option of entering into a garden leave agreement with covered employees. "Garden leave" generally means that an employee remains employed – and on the payroll – during a period where the employee is no longer performing work or services for the employer. Given that they are still employed, they cannot work for a competitor during the garden leave.

An enforceable garden leave agreement under the CHOICE Act must satisfy the following requirements:

- The covered employer must advise the covered employee in writing of their right to seek legal counsel prior to entering into the covered garden leave agreement and allow the covered employee at least seven days to consider the offer.
- The covered employee must acknowledge, in writing, that they have received confidential information or customer relationships.
- After the first 90 days of the notice period, the covered employee is not required to provide any services to the employer, and the covered employee is also permitted to engage in nonwork activities during the remainder of the notice period.
- The covered employee may, with the covered employer's permission, work for another employer while still employed by the covered employer during the remainder of the notice period.

Notably, the CHOICE Act preempts conflicting Florida law, creating a more predictable enforcement landscape for employers who comply with its provisions. In stark contrast to the discretionary and fact-intensive nature of Section 542.335, the new framework offers a statutory "safe harbor" for employers willing to invest in retaining or compensating key personnel.

In sum, the CHOICE Act introduces a parallel legal regime that strengthens employers' ability to protect investments in high-value employees while offering greater clarity, predictability, and enforceability than current Florida noncompete law.