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Florida on Verge of Enacting Employer-Friendly Non-Compete Law

Law and the Workplace on **June 30, 2025**

Florida lawmakers recently passed the Florida Contracts Honoring Opportunity, Investment, Confidentiality and Economic Growth (CHOICE) Act (the "Act"), which would create a presumption that covered non-compete and garden leave agreements are enforceable. If it is approved by Governor Ron DeSantis, or allowed to become law without his signature, the Act will take effect on July 1, 2025.

The Act bucks the trend of states (e.g., Virginia and Wyoming) passing laws limiting the enforceability of restrictive covenants. According to the Act's "Legislative findings," the Legislature was motivated to pass the measure due to its findings that:

- "strong legal protections in contracts between employers and contracted personnel which encourage optimal levels of information sharing and training and development" are a proper and legitimate state interest;
- "alternative means of protecting confidential information and client relationships, such as nondisclosure agreements, fixed-duration term contracts, and nonsolicitation clauses in employment contracts, are inadequate to protect against the significant global risks faced by companies in this state"; and
- "predictability in the enforcement of [non-compete] contracts … encourages investment in this state."

Currently in Florida, to enforce a non-compete, an employer must show that it is: (i) contained in a written agreement signed by the employee, (ii) justified by a "legitimate business interest," and (iii) reasonably necessary to protect the legitimate business interest. § 542.335, Fla. Stat. The Act does not replace current state law; instead, it creates additional categories of enforceable agreements, as summarized below. Restrictive covenants not covered by the Act remain subject to Florida's existing non-compete laws.

Employees and Agreements Covered Under the Act

Covered Employees

The Act applies to any "covered employee," defined as "an employee or individual contractor who earns, or is reasonably expected to earn, a salary greater than twice the annual mean wage of":

- "the county [in Florida] in which the … employer has its principal place of business"; or
- if the employer's principal place of business is not in Florida, "the county [in Florida] in which the employee resides."

This salary threshold currently can range anywhere from $80,000 to nearly $150,000.

Covered Agreements

The Act creates and governs two types of non-compete agreements. Notably, these agreements require either that the employer has a "principal place of business [in Florida]," or the covered employee "maintain[] a primary place of work in" Florida, which means they must "spend[] more work time" in Florida than "any other single workplace," and the "agreement is expressly governed by the laws of" Florida.

- *"Covered Non-Compete Agreement"*: A written agreement with a covered employee in which, for a period "not to exceed 4 years and within the geographic area defined in the agreement," "the covered employee agrees not to assume a role with or for another business, entity, or individual" in which:
  - "the covered employee would provide services similar to the services provided to the covered employer during the 3 years preceding the noncompete period"; or
  - "it is reasonably likely the covered employee would use the confidential information or customer relationships of the covered employer."
- *"Covered Garden Leave Agreement"*: A written agreement with a covered employee, in which:
  - The covered employee agrees to provide "up to, but no more than, 4 years of advance, express notice before terminating the employment or contractor relationship";
  - "The covered employee agrees not to resign before the end of such notice period"; and

- “The covered employer agrees to retain the covered employee for the duration of such notice period and to continue paying the covered employee the same salary and providing the same benefits that the covered employee received from the covered employer in the last month before the commencement of the notice period.”

During the notice period for Covered Garden Leave Agreements, the “covered employer is not obligated to provide discretionary incentive compensation or benefits or have the covered employee continue performing any work.”

Requirements for Covered Non-Compete and Garden Leave Agreements

For both Covered Non-Compete and Garden Leave Agreements to be enforceable, the Act requires that employees:

1. are advised, “in writing, of the right to seek counsel before execution of the” agreement;
2. are provided the proposed agreement “at least 7 days before an offer of employment expires” (for prospective employees) or “at least 7 days before the date that an offer to enter into” the agreement expires (for current employees); and
3. acknowledge, in writing, their receipt of confidential information or customer relationships.

In addition to the above, for Covered Non-Compete Agreements, the Act requires the agreement provide that “the non-compete period is reduced day-for-day by any nonworking portion of the notice period, pursuant to a covered garden leave agreement between the covered employee and the covered employer, if applicable.”

In addition to the above, for Covered Garden Leave Agreements, the Act requires they include the following provisions:

- “After the first 90 days of the notice period, the covered employee does not have to provide services to the covered employer”;
- “The covered employee may engage in nonwork activities at any time, including during normal business hours, during the remainder of the notice period”;
- “The covered employee may, with the permission of the covered employer, work for another employer … during the remainder of the notice period”; and

- the "notice period may be reduced during the notice period if the covered employer provides at least 30 days' advance notice in writing to the covered employee."

Enforcement and Remedies

Notably, the Act *requires* courts, "[u]pon application by a covered employer seeking enforcement of a" covered agreement, "to preliminarily enjoin a covered employee from providing services to any business, entity, or individual other than the covered employer during the noncompete period."

To dissolve a preliminary injunction, the covered employee must "establish by clear and convincing evidence, based on nonconfidential information," that:

1. "The covered employee will not perform," during the noncompete or notice period, "any work similar to the services provided to the covered employer during the 3-year period preceding the commencement of" the noncompete or notice period, "or use confidential information or customer relationships of the covered employer"; or
2. the employer "has failed to pay or provide the consideration provided for in the non-compete agreement," or the "salary and benefits provided for in the covered garden leave agreement during the notice period," and has had "a reasonable opportunity to cure the failure"; or
3. in case of the Non-Compete Agreement only, the "business, entity, or individual seeking to employ or engage the covered employee is not engaged in, and is not planning or preparing to engage in during the noncompete period, business activity similar to that engaged in by the covered employer in the geographic area specified in the noncompete agreement."

The Act also contains similar provisions mandating courts to preliminarily enjoin the putative employers of employees covered by a Non-Compete or Garden Leave Agreement, and setting forth the requirements for dissolutions of such injunctions.

In addition, the Act requires that "[a]ny information filed with the court which the covered employer deems to be confidential … be filed under seal to protect confidentiality and avoid substantial injury." This requirement appears to apply to the entire proceeding, including applications for entry of preliminary injunctions and their dissolutions. Further, courts "must presume that an employee or individual contractor has access to confidential information or customer relationships if the employee or individual contractors acknowledges the access or receipt of such access in writing."

The Act also provides that if a “covered employee engages in gross misconduct” (which is not defined) “against the covered employer, the covered employer may reduce the salary or benefits of the covered employee or take other appropriate action during the notice period, which … may not be considered a breach of” the agreement.

The Act provides that in “any action to enforce” covered non-compete and garden leave agreements, “the prevailing party is entitled to reasonable attorney fees and costs,” and covered employers are “entitled to recover all available monetary damages for all available claims.”

Key Takeaways

If it becomes law, the Act will provide Florida employers and employers with employees in Florida a powerful way to secure post-employment restrictions. Ahead of the Act’s expected July 1 effective date, Florida employers or employers with employees primarily working in Florida should review their existing non-compete and garden leave agreements (or lack thereof) to assess whether they want to take advantage of the options provided by the Act.

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