

# Florida's CHOICE Act Offers Employers Unprecedented Tools for Non-Compete + Garden Leave Agreements

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## Meet the Authors



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## Takeaways

- The Florida Legislature's recently passed CHOICE Act allows covered non-compete and garden leave agreements to extend for up to four years — double the current amount of enforcement time.
- The Act makes it significantly easier for employers to obtain an injunction and enforce covered agreements.
- Employers looking to take advantage of the Act will need to comply with its technical requirements.

## Article

The Florida Legislature passed the Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act on April 24, introducing the most sweeping changes to Florida's restrictive covenant framework in years and offering employers unprecedented tools to protect their valuable business interests. If enacted, the Act will take effect on July 1, 2025.

### Who Does the CHOICE Act Cover?

The CHOICE Act applies to covered employees or independent contractors earning more than twice the annual mean wage in the Florida county where either (i) the covered employer's principal place of business is located or (ii) where the covered individual resides if the covered employer's business is located outside of Florida. Therefore, depending upon the Florida county, the compensation threshold could range anywhere from \$80,000 to nearly \$150,000.

Notably, the Act expressly excludes licensed healthcare practitioners as defined in Section 456.001, Florida Statutes, from its scope. But the Act does not prohibit enforcement of — or otherwise render unenforceable — restrictive covenants with healthcare practitioners under existing Florida restrictive covenant law, subject to the exclusions of Section 542.336, Florida Statutes, which prohibits restrictions between physicians who practice a medical specialty and an entity that employs or contracts with all physicians who practice that same specialty within the same Florida county.

### Covered Non-Compete Agreements

Under the CHOICE Act, non-compete agreements with covered employees or contractors can extend up to four years post-employment. In contrast, under Florida's current non-compete statute, employee-based non-competes lasting longer than two years are presumed to be unreasonable and unenforceable. To be enforceable under the CHOICE Act, covered non-compete agreements must:

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- Be in writing and advise the worker of their right to consult legal counsel, providing at least seven days for review before execution.
- Include a written acknowledgment from the worker confirming receipt of confidential information or substantial client relationships during employment.
- Specify the non-compete period will be reduced day-for-day by any nonworking portion of a concurrent garden leave period, if applicable.

### Covered Garden Leave Agreements

The CHOICE Act also codifies enforcement of certain garden leave arrangements, allowing employers to require covered employees or contractors to provide advance notice — up to four years—before employment or contract termination. During this notice period, employees remain on the employer’s payroll at their base salary and benefits but are not entitled to any discretionary compensation. During the first 90 days of the garden leave period, an employer may require the worker to continue working. But a worker may engage in nonwork activities at any time thereafter.

To be enforceable under the Act, a covered garden leave agreement must:

- Be in writing and advise the worker of their right to consult legal counsel, providing at least seven days for review before execution.
- Include a written acknowledgment from the worker confirming receipt of confidential information or substantial client relationships during employment.
- Not obligate the worker, after the first 90 days of the notice period, to provide any further services to the employer and allow the worker to engage in nonwork activities. (The worker may also work during the remainder of the notice period for another employer so long as the covered employer has provided permission to the worker.)

### How Are Covered Agreements Enforced?

The CHOICE Act provides robust remedies for employers seeking to enforce covered agreements. For covered entities, the Act requires strict enforcement and makes it significantly easier for employers to obtain injunctions. Upon application, courts are **required** to issue preliminary injunctions to enforce a covered agreement unless the employee or contractor can demonstrate, by clear and convincing evidence, the agreement is unenforceable or unnecessary to prevent unfair competition. Further, 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 such activity constituting a breach of the covered agreement. An employer who prevails in its enforcement action is entitled to recover its monetary damages and attorney’s fees.

### What Should Employers Do Now?

The CHOICE Act represents a significant development in Florida’s restrictive covenant law, offering employers enhanced mechanisms to safeguard their business interests through enforceable non-compete and garden leave agreements. Employers seeking to avail themselves of the new Act should take immediate steps to review and modify existing agreements or, if appropriate, draft new agreements.

Please contact a Jackson Lewis attorney if you have any questions or need assistance to ensure compliance with the CHOICE Act.

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