Legal Update Article

Florida's CHOICE Act Enacted: Helping Employers Read Between the Lines of the New Non-Compete Law

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Takeaways

- Florida's CHOICE Act diverges sharply from national trends, expanding rather than restricting employers' power to safeguard their business interests.
- The new law makes preliminary injunctions a default remedy, burdening employees to prove why an injunction should be dissolved.
- Questions remain as to how federal courts will apply the Act.

Related links

- House Bill 1219
- Florida's CHOICE Act Offers Employers Unprecedented Tools for Non-Compete + Garden Leave Agreements
- Wyoming's New Non-Compete Law Starts in July: Employers Need to Look at Their Agreements Now
- Tom Leek's employment agreements bill advances

Article

Florida's CHOICE Act, short for "Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth" (CHOICE), is now law. For details of the Act, see Florida's CHOICE Act Offers Employers Unprecedented Tools for Non-Compete + Garden Leave Agreements.

But the law did not have the direct endorsement of Florida's pro-business governor. Departing from his usual approach, the governor took no action on the bill, neither signing nor vetoing it, and instead allowing the bill to become law by default on July 3, 2025. Oddly, the Act's stated July 1 effective date precedes its actual enactment on July 3. In any event, the CHOICE Act positions Florida as the most employer-friendly state in the nation for restrictive covenants and diverges from a national trend by other states to limit the enforcement of non-compete agreements. As the law is newly enacted, judicial interpretation remains uncertain, and courts likely will play a pivotal role in shaping how the CHOICE Act is applied.

A Law Without a Signature — What Does It Mean?

The governor's inaction on the Act is notable, standing in contrast with his typically assertive legislative style. Although the bill passed with strong support from business interests, it faced vocal opposition from labor advocates and legal scholars. By choosing not to sign or veto the bill, the governor may have been trying to avoid alienating either side.

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The governor also may be signaling a cautious stance toward future restrictive covenant legislation. The Act addresses non-compete and garden leave agreements, but it does not apply to other restrictive covenants such as non-solicitation provisions. As a result, a covered agreement could impose a four-year restriction on competition, while only prohibiting customer solicitation for a significantly shorter period — creating potential enforcement inconsistency. The Florida legislature may seek to resolve this inconsistency by extending the permissible duration of other restrictive covenants. However, the governor's passive approach to the Act could indicate potential resistance to further legislative expansion in this area.

Whose CHOICE Is It, Really?

Despite its name, the CHOICE Act offers little in the way of actual choice for employees. Covered employees — those earning more than twice the mean wage in their county — may now be subject to non-compete and garden leave agreements lasting up to four years. These agreements are presumed enforceable and not contrary to public policy.

While the national trend has skewed toward restricting or banning non-compete agreements — and while the Federal Trade Commission recently made a high-profile (though ultimately unsuccessful) attempt to ban non-compete enforcement nationwide — Florida is doubling down on non-competition agreements. The Act significantly expands the enforceability of restrictive covenants, positioning Florida as a national outlier.

The acronym "CHOICE" appears to serve more as an advertisement of Florida's pro-business policies rather than a reflection of employee empowerment. It seems likely aimed at attracting out-of-state employers to "choose" to relocate to the Sunshine State. As state senator Tom Leek, the bill's sponsor, stated: "Florida is poised to become one of the finance capitals of the world … you have to provide those businesses protection on the investment that they're making and their employees."

Will the Act Hold Up in Federal Court?

Federal courts remain divided on whether to apply the presumption of irreparable harm outlined in section 542.335(1)(j), Florida's general restrictive covenant statute. Several courts have declined to apply these presumptions, finding them inconsistent with federal equitable principles governing injunctive relief. This divergence raises important questions about the CHOICE Act's enforceability in federal forums.

The CHOICE Act goes even further than section 542.335, effectively making injunctions a default remedy and placing the burden on employees to prove — by clear and convincing evidence — why an injunction should be dissolved. This enhanced enforcement mechanism may face scrutiny in federal court, where equitable relief is traditionally governed by federal, not state, standards.

As a result, employers seeking to take full advantage of the CHOICE Act's procedural mechanisms may prefer to file enforcement lawsuits in Florida state courts, where the Act's automatic injunction provisions are more likely to be upheld. Conversely, defendants may attempt to remove CHOICE Act cases to federal court, where the Act's provisions may face greater scrutiny. In any event, employers will need to carefully evaluate jurisdictional considerations — including diversity and federal question grounds — when initiating litigation to better avail themselves to the Act's protections.

Next Steps for Employers

- Review existing agreements to determine whether they are covered under the CHOICE Act.
- Revise non-compete agreements to ensure compliance with the Act's requirements.
- Monitor litigation for early interpretations of the Act's enforcement mechanisms.

Jackson Lewis attorneys are available if you have any questions or need assistance to ensure compliance with the CHOICE Act.