

FLORIDA'S CHOICE ACT MAY MAKE FLORIDA THE MOST EMPLOYER-FAVORABLE STATE IN THE UNITED STATES WITH RESPECT TO NONCOMPETE ARRANGEMENTS.

The Florida legislature recently passed the Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act. The governor of Florida did not sign or veto the Choice Act, and it became effective on or around July 4, 2025.

The Choice Act will permit post-employment noncompetes and garden leave agreements for up to four years. Additionally, courts in Florida will be required to issue preliminary injunctions upon violations of such agreements, unless the employee or independent contractor can show by clear and convincing evidence that the agreement is unenforceable or unnecessary to prevent unfair competition. An employer that successfully enforces the agreement will also be entitled to monetary damages and attorney's fees.

The Choice Act will apply to agreements with "covered employees" who maintain a primary place of work in Florida, regardless of any choice of law provision, or to "covered employers" whose principal place of business is in Florida and which agreement is expressly governed by Florida law.

A covered employer means an entity or individual who employs or engages a covered employee. A covered employee means an employee or independent contractor who earns, or is reasonably expected to earn, a salary more than twice the annual mean wage in the Florida county where either (i) the employer's principal place of business is located, or (ii) the worker resides, if the business is not located in Florida.

The agreement providing the noncompete or restrictive covenant may be provided to the employee or independent contractor at the beginning of their service or at any time during service to the covered employer, provided that such employee or independent contractor has at least seven days to review the restrictive covenant prior to signing.

A noncompete agreement under the Choice Act can be for up to four years post termination, provided that the agreement advises the worker of the worker's right to consult legal counsel and review the agreement for seven days prior to

execution, and the worker provides written confirmation that they received confidential information or customer relationships.

A garden leave agreement under the Choice Act can be used to require up to four years of advance notice prior to termination of the relationship, provided that (i) the agreement advises the worker of their right to consult legal counsel and review the agreement for seven days prior to execution, (ii) the worker provides written confirmation that they have received confidential information or customer relationships (iii) after the first 90 days of the notice period the worker does not have to provide services to the employer and may engage in non-work activities at any time, including during normal business hours, and work for another employer (subject to the employer's permission), for the remaining notice period, and (iv) the employer continues to pay the base salary and benefits to the worker for not accepting employment elsewhere during such garden leave agreement. The employer can shorten or terminate the notice period by providing 30 days' advance notice.

Employers located in Florida as well as employers with employees or independent contractors located in Florida should consider whether to update or adopt new restrictive covenant arrangements.

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