# New Law May Reshape Fla. Employer Noncompete Strategy

By **Kimberley Lunetta and John Guyette** (July 2, 2025)

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Effective July 1, the Florida Contracts Honoring Opportunity, Investment, Confidentiality and Economic Growth Act allows covered noncompete and garden leave agreements to prohibit competition for up to four years after termination.[1] This increases the two-year limitation under Florida's current noncompete statute, Section 542.335.[2]

With the new CHOICE Act, employers must balance complex and competing interests — bolstering protections for their business while competing for talent in the marketplace.

The act applies to covered employees or independent contractors that earn more than twice the annual mean wage in the Florida county where either (1) the covered employer's principal place of business is located, or (2) where the covered individual resides, if the covered employer's principal place of business is not located in Florida.[3]

The act allows employers to restrict covered employees from engaging in competitive activity for up to four years through covered noncompete agreements. The act also gives employers the ability to prohibit covered employees from working for another employer in any capacity, absent permission from the employer, through a covered garden leave agreement.

A covered garden leave agreement provides for a paid notice period of up to four years, during which time the employee remains employed and continues to be paid their base salary. Employers that enter into garden leave agreements may reduce the garden leave period at any time after it begins by giving 30 days' advance notice to the covered employee.[4]

In addition, upon application by a covered employer seeking enforcement of a covered noncompete or garden leave agreement, a court must preliminarily enjoin a covered employee from providing services. The court may modify or dissolve the injunction only if the covered employee establishes by clear and convincing evidence that the employee's new employment would not result in unfair competition to the covered employer. Further, the employee can only use nonconfidential information to make this showing.

**What This Means for Employers**

Employers should evaluate existing noncompete agreements on a case-by-case basis and decide whether their businesses would benefit from new agreements with longer noncompete or garden leave periods and enhanced enforcement mechanisms.

Employers will need to consider the pros and cons of requiring employees to enter into entirely new agreements. While new noncompete agreements may provide longer restricted periods and a smoother path to obtaining an injunction when employees breach those agreements, in order to enjoy the full complement of benefits available under the act,

employers will also have to consider whether to enter into a garden leave agreement and agree to continued payment of an employee's base salary, at a minimum, during the applicable notice period.

Asking employees to sign new agreements may also affect an employer's ability to attract and retain talent, as well as the cost of doing so. Indeed, an employee or prospect may leverage the value of a new agreement to negotiate a shorter noncompete period or enhanced garden leave pay that exceeds the employee's base salary.

When drafting new noncompete or garden leave agreements, employers should also consider whether certain employees or positions pose a heightened risk of postemployment competition, and evaluate how long a noncompete or garden leave period would need to be to protect the business against competition. Certain positions or key employees may warrant longer noncompete periods or nonworking garden leave provisions, but employers will need to balance the benefits with the cost, particularly because market forces may drive the cost of garden leave agreements significantly higher than just base salaries.

Employers will also need to assess how the length and monetary value of their noncompete and garden leave provisions will affect their ability to attract and retain talent. Employers should consider both existing and future interests when considering whether to revise or implement noncompete or garden leave agreements.

**Additional Employer Considerations**

Whether to extend restrictions for up to four years is a weighty decision for Florida employers to consider. A longer restricted period could provide leverage for candidates and existing employees to negotiate higher compensation.

Employees may attempt to negotiate the length of a noncompete agreement during both the hiring process and the termination process. Employers should carefully evaluate these factors when determining the appropriate duration of post-termination restrictions. For example, a longer noncompete period may provide greater protection against competitive employment, but would still allow an employee to work in a noncompetitive position.

Additionally, a garden leave period may keep the employee out of the workforce entirely, but will require the employer to continue providing salary and benefits. The act's garden leave provision does give employers the flexibility to shorten the garden leave period after it begins, with 30 days' notice. Employers should build into their noncompete agreements a provision explicitly stating that all payments to the employee shall cease, should the employer elect to shorten the garden leave period.

Employers must evaluate business needs, industry trends and evolving market forces in addition to legal options available under the act. For example, what competition or market changes are occurring among businesses in the same sector or industry? What deals or transactions are occurring in the near future that could be affected? Would shortening an employee's noncompete agreement or imposing garden leave have a positive or negative impact on the employer's business model? Would extending the noncompete or offering garden leave buy the employer more time to evaluate market changes and address them?

Only time will tell how the act will affect job markets and industry trends, but employers have much to consider when determining the extent to which they need and are willing to pay for enhanced post-termination restrictions.

Employers may consider including provisions in their agreements setting forth terms under which they would waive or shorten a noncompete or garden leave period if an employee (or subsequent employer) were willing to compensate the employer for doing so. Buyout provisions may increase bargaining power for both employers and employees, allowing prospective employers to hire employees subject to garden leave agreements while compensating the former employer for the value of the protections it is giving up. Employers should evaluate the legal and business impacts of including such provisions, and the specific terms necessary to protect their interests.

Employers outside of Florida should also pay close attention to how the act and contractual choice of law provisions interact with the laws of other states in which they have employees. This is especially important given that the act purports to apply to agreements with employees who maintain a primary place of work in Florida, regardless of any choice of law provisions.[5]

If an employer is planning on moving its business to Florida, it should reevaluate any existing noncompete agreements when considering whether to require new agreements subject to the act. Employers must decide whether it would be beneficial to provide bonuses, promotions or additional equity as consideration for new agreements with longer noncompete periods. Employers moving to Florida should also weigh the benefit to the employer compared to the cost of offering additional consideration, including whether an extended noncompete or garden leave period for up to four years is worth the increase in costs.

**Enforcement of Noncompete Agreements**

As noted above, if an employer seeks to enforce a noncompete or garden leave agreement covered by the act, courts are required to preliminarily enjoin the covered employee from providing services during the restricted period.[6]

In addition to an injunction, a covered employer may also recover monetary damages for all available claims, including but not limited to breach of contract and tortious interference.[7] Courts may also grant a preliminary injunction enjoining a third-party business, entity or individual from engaging a covered employee during the covered employee's restricted period.[8]

Further, should an employee challenge a preliminary injunction issued pursuant to the act, the act requires courts to award attorney fees and costs to the prevailing party.[9] This provision of the act incentivizes both employers and employees to carefully consider the merits of their respective claims before seeking a preliminary injunction or seeking to vacate one.

**Conclusion**

In short, Florida's CHOICE Act provides additional protections to employers and raises new considerations for both employees and employers to evaluate and monitor over time. Employees should understand the implications of noncompete and garden leave agreements when they sign them. Employers should evaluate existing noncompete agreements to consider whether or not revisions are appropriate, and balance the value of the restrictions with the costs.

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[1] https://www.flsenate.gov/Session/Bill/2025/1219/BillText/er/PDF.

[2] https://www.flsenate.gov/Laws/Statutes/2018/0542.335.

[3] The Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act of 2025, H.B. 1219, § 542.43(3) (2025).

[4] Id. at § 542.44(4).

[5] Id. at § 542.44(1)(a).

[6] Id. at § 542.44(5)(a)(1)-(2).

[7] Id. at § 542.44(5)(c).

[8] Id. at § 542.44(5)(b).

[9] Id. at § 542.44(5)(d).