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Practice Update

Florida Makes a Bold "CHOICE": New Law Strengthens Enforceability of Non-Compete Agreements

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The Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act became law on July 3, 2025, expanding employers' rights in enforcing non-compete and garden leave agreements with Florida-based workers. The Act is intended to "encourage optimal levels of information sharing and training and development" by companies with their workers, while further protecting employers' confidential information and client relationships against the "significant global risks faced by companies" in the state. In essence, Florida is swinging its doors wide open for business, in an attempt to foster even more investment in the Sunshine State. Here is what employers need to know about the CHOICE Act.

The Nuts and Bolts of the CHOICE Act

Prior to the CHOICE Act, Florida law was already generally employer-friendly in the context of enforcing restrictive covenants. Under Florida Statute § 542.335, an employer must prove the existence of a legitimate business interest justifying the restriction. Now, by enacting the CHOICE Act, Florida has made it even easier for an employer to enforce a non-compete, with the Act explicitly stating that a covered non-compete agreement does not violate public policy as a restraint of trade and is

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fully enforceable so long as the restriction complies with several requirements (discussed below). In other words, CHOICE-compliant agreements will be cloaked in a strong presumption of enforceability, with the burden shifting to the employee to prove otherwise. The new CHOICE Act is codified at Florida Statutes §§ 541.41 through 541.45, but leaves undisturbed the provisions of § 542.335.

Who's Covered?

The CHOICE Act applies to "covered employees," which is defined to include individuals (employees or contractors) who earn a salary twice the annual mean wage of the Florida county where either (i) the covered employer has its principal place of business or (ii) where the employee resides if the covered employer's principal place of business is outside of Florida. The Act is intended to cover workers who spend the majority of their work time in Florida (regardless of any applicable choice of law provision) or who work for a Florida-based company where the agreement is expressly governed by Florida law. Notably, certain healthcare professionals are expressly excluded from coverage by the CHOICE Act.

Compensation Threshold

The CHOICE Act defines "annual mean wage" as the "most recent annual mean wage as calculated by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor calculation, for all occupations in [the] state." Thus, employers can assess the annual mean wage of the applicable Florida county, to determine if a particular worker may be a "covered employee," by reviewing the latest data available from the U.S. Bureau of Labor Statistics. The CHOICE Act further defines "salary" to mean the base compensation, calculated on an annualized basis, which a covered employer pays a covered employee, including a base wage, a salary, a professional fee, or other compensation for personal services, and the fair market value of any benefit other than cash.

Salary does not include healthcare benefits, severance pay, retirement benefits, expense reimbursement, distribution of earnings and profits not included as compensation for personal services, discretionary incentives or awards, or anticipated but indeterminable compensation, including tips, bonuses, or commissions. Depending on the particular Florida county, the compensation threshold could range anywhere from $80,000 to nearly $150,000 for a worker to be "covered."

The Act impacts two types of agreements: (1) covered garden leave agreements and (2) covered non-compete agreements.

Covered Garden Leave Agreements

A garden leave agreement is an agreement for an employee to sit on the sidelines and not compete with the former employer, while the employee remains on the employer's payroll during a specified period. Under the Act, a "covered garden leave agreement" is defined as a written agreement, or part of a written agreement, between a covered employee and covered employer in which (a) the covered employee and covered employer agree to up to, but no more than, four years of advance express notice before terminating the employment or contractor relationship; (b) the covered employee agrees not to resign before the end of such notice period; and (c) 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 the covered employee received from the covered employer in the last month before the commencement of the notice period. Importantly, however, a covered employer is not required to provide *discretionary* incentive compensation or benefits to a covered employee during the notice period.

A covered garden leave agreement is enforceable if the following conditions are met:

i. The covered employer advised the covered employee in writing of the right to seek counsel before execution and provides at least seven days to review the agreement;

ii. The time to provide advance express notice of termination (the notice period) does not exceed four years;

iii. The covered employer agrees to pay the covered employee their regular base salary and benefits during the notice period;

iv. The covered employee acknowledges in writing receipt of confidential information or customer relationships; and

v. The agreement provides that:

a. After the first 90 days of the notice period, the covered employee does not have to provide services to the covered employer;

b. The covered employee may engage in non-work activities at any time, without limitation, for the remainder of the notice period;

c. The covered employee may, with permission from the covered employer, work for another employer for the remainder of the notice period; and

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

Covered Non-compete Agreements

The Act defines a covered non-compete agreement to mean a written agreement in which, for a period not to exceed four 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:

i. In which the covered employee would provide services similar to the services provided to the covered employer during the three years preceding the non-compete period; or

ii. In which it is reasonably likely the covered employee would use the confidential information or customer relationships of the covered employer.

Importantly, since only (a) OR (b) above must apply, an employer need not prove that the covered employee is actually providing services to a competing business to enforce a non-compete agreement. Rather, it is sufficient for an employer to establish that the employee is likely to use the confidential information or customer relationships of the employer in their new employment — even if it is not a directly competing business providing similar services as the former employer.

Covered non-compete agreements are enforceable if the following conditions are met:

i. The covered employer advised the covered employee in writing of the right to seek counsel before execution and provides at least seven days to review the agreement;

ii. The covered employee acknowledges in writing receipt of confidential information or customer relationships;

iii. The non-compete period does not exceed four years; and

iv. The non-compete period is reduced day-for-day by any non-working portion of the notice period, pursuant to a covered garden leave agreement, if applicable.

Impact of the CHOICE Act on Other Restrictive Covenants

The CHOICE Act explicitly states that any action regarding a restrictive covenant that does not meet the definition of a covered garden leave agreement or a covered non-compete agreement is governed by the existing Florida statute (i.e. § 542.335) addressing the enforceability of restrictive covenants. This would include non-disclosure and non-solicitation clauses in employment contracts, as well as non-competition clauses that do not meet all the criteria under CHOICE. While the CHOICE Act does not nullify or impact any existing restrictive covenant agreement, employers can consider whether they want to expand the scope of their non-compete agreements (to cover a period of up to four years) in light of the new law, and to take advantage of the concomitant presumptions for enforcement and injunctive relief. If they choose to do so, employers must ensure that the new non-compete agreement complies with the requirements set forth above in terms of what must be explicitly stated in the agreement for it to be enforceable, and the review period required. Fortunately, under Florida law, continued employment of an at-will employee is generally sufficient consideration for the entry into a new or updated restrictive covenant agreement.

Remedies Available Under the CHOICE Act

The CHOICE Act provides that, if an employer seeks enforcement of a covered non-compete agreement, the court *must* preliminarily enjoin a business, entity, or individual from engaging a covered employee during the covered employee's non-compete period. The court may only modify or dissolve the injunction if the business, entity, or individual being enjoined establishes — by clear and convincing evidence — that (1) the covered employee will not provide any services similar to the services provided to the covered employer during the three-year period preceding the commencement of the non-compete period or use confidential information or customer relationships of the covered employer;

or (2) the business or individual seeking to employ or engage the covered employee is not engaged in, and is not planning or preparing to engage in, any business activity in the geographic area specified in the non-compete agreement during the non-compete period if such business activity is similar to those engaged in by the covered employer.

In addition to the injunctive relief that is essentially guaranteed for a violation of a covered non-compete agreement, a prevailing covered employer is entitled to recover all available monetary damages for all available claims. The CHOICE Act also provides for prevailing party's attorneys' fees and costs in any action to enforce the law.

Implications for Employers

Employers should review their existing non-compete agreements with employees and contractors who primarily work in Florida, or where the employer otherwise has a substantial connection to Florida, to assess whether the scope of such agreements should be expanded in light of the additional protections for employers under the CHOICE Act. The language of such agreements should also be reviewed to ensure that they include an acknowledgment that the covered employee was advised in writing to seek legal counsel before execution, was provided the requisite seven days to review the agreement, and that they received confidential information or customer relationships. Employers must also ensure that they comply with the notice periods for both types of covered agreements under the Act when hiring new employees and/or asking current employees to sign restrictive covenant agreements.

For assistance in reviewing your existing restrictive covenant agreements or drafting new agreements for compliance with the CHOICE Act, please contact your Akerman attorney.