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JULY 7, 2025 | PUBLICATION

Client Alert: Significant Employer-Friendly Changes to Florida Non-Competition Law Effective July 1

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Effective July 1, 2025, Florida's Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth Act (the CHOICE Act) now allows for non-competition periods of up to four (4) years after the end of employment. Additionally, the CHOICE Act provides for streamlined enforcement of covered non-compete agreements, including but not limited to automatic temporary injunctions against covered employees and their new employer.

The CHOICE Act only applies to "covered employees," defined as "an employee or individual contractor who earns or is reasonably expected to earn a salary greater than twice the annual mean wage of the county in this state in which the covered employer has its principal place of business." Depending upon where an employer's principal place of business is located, this minimum earning threshold can be as low as $81,000 per year. Notably, the CHOICE Act specifically excludes health care practitioners from the definition of a covered employee, regardless of their salary level.

Garden Leave Agreements

The CHOICE Act addresses two types of non-competition provisions: a garden leave agreement and a covered non-compete agreement. Under a garden leave agreement, the employer and employee agree to provide up to four (4) years of prior notice before termination. During the notice period, the employer must continue paying the covered employee the same salary and benefits, and the employee is prohibited from working for any other person or entity without the employer's permission.

Covered garden leave agreements must also meet the following requirements to be enforceable under the CHOICE Act: (1) the covered employee must be advised, in writing, of his/her right to seek counsel before agreeing to the agreement's terms; (2) the covered employee acknowledges, in writing, the potential of

acquiring the covered employer's confidential information or client relationships; and (3) the agreement provides that: (a) the covered employee no longer has to provide services to the covered employer after ninety (90) days of the notice period have passed, (b) the covered employee may take part in non-work activities during the notice period, (c) the covered employee may work for another entity during the notice period, if permitted by the covered employer, and (d) the covered employer may reduce the notice period upon thirty (30) days' notice to the covered employee.

If the employee breaches the garden leave agreement, a court, upon application, must issue a preliminary injunction prohibiting the employee from providing services to any other person or entity during the notice period. The preliminary injunction may be dismissed only if the employee proves that no services similar to those provided to the covered employer will be provided, or the covered employer failed to pay the salary or benefits required by the agreement during the notice period after the covered employee provided the employer a "reasonable opportunity" to fix the issue. However, it is important to note that the CHOICE Act also allows a covered employer to reduce the notice period upon thirty (30) days' prior notice and reduce or eliminate compensation during the notice period if the covered employee engages in "gross misconduct."

Covered Non-Compete Agreements

A covered non-compete agreement is a written agreement in which the covered employee agrees not to provide similar services for another person or entity or use the confidential information of the covered employer for a period of up to four (4) years within the geographic area identified in the agreement, thus extending the current maximum reasonable period for non-compete agreements by two (2) years. A covered non-compete agreement must meet the following requirements to be enforceable under the CHOICE Act: (1) the covered employee must be advised, in writing, of his/her right to seek counsel before agreeing to the terms; (2) the covered employee acknowledges, in writing, the potential of acquiring the covered employer's confidential information or client relationships; and (3) the non-compete agreement "provides that the agreement is reduced day-to-day by any nonworking portion of the notice period, pursuant to a covered garden leave agreement."

Like a covered garden leave agreement, if the employee breaches the covered non-competition agreement, a court, upon application, must automatically enjoin the employee from providing similar services to any other person or entity during the non-competition period.

The ability to obtain an automatic injunction will likely significantly shorten and decrease the cost of non-competition enforcement for employers. Additionally, under the CHOICE Act, employers will now be able to enforce non-competition periods of up to four (4) years after the end of employment. Employers with employees making at least $81,000 in salary should consider implementing updated non-competition agreements in order to utilize these significant benefits.

If you have any questions about the CHOICE Act or Florida non-competition law, Shumaker's Labor & Employment attorneys are available to assist.

Isabel Troncoso contributed to this article.

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