

CLIENT ALERT

Navigating Compensation Governance

Florida Strengthens Non-Compete Restrictions

A new Florida law makes enforceable non-compete provisions for up to 4 years following an employee's termination of employment.

The law applies to employees (i) who have a certain nexus to Florida and (ii) whose wages exceed a certain threshold.

The Florida law runs counter to a limited trend among states to weaken or prohibit non-compete arrangements.

Overview

On July 1, 2025, Florida's new Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act became effective. Typically, non-compete arrangements are enforceable for up to two years following an employee's termination of employment in most jurisdictions (where such arrangements are permitted), including Florida. However, in a first-in-the-nation law, the CHOICE Act extends the post-termination enforcement period from 2 years to up to 4 years. In addition, the Act strengthens the ability of Florida employers to enforce lawful non-compete provisions.

Covered Individuals

The CHOICE Act covers not only Florida-based employees, but extends to out-of-state workers under certain conditions. Specifically, the Act allows an employer to enter into a non-compete agreement with up to a 4-year non-compete period with any individual who works:

- Primarily in Florida without regard to where his or her employer maintains its principal place of business and
- Outside of Florida if such individual is covered under a non-compete agreement which is expressly governed by Florida law and whose employer's principal place of business is in Florida.

However, a non-compete agreement may only apply to an employee who earns or is reasonably expected to earn a salary greater than twice the annual mean wage of the county in which (i) his or her employer has its principal place of business in Florida, or (ii) the employee resides if the employer's principal place of business is not in Florida.

Due to the minimum wage requirement, employers will be unable to enter into legally enforceable non-compete agreements with the majority of Florida workers, especially those who work in relatively low wage service-industry sectors, such as fast food, hospitality, health care and education. However, employers will be able to enter into legally enforceable agreements with relatively modestly paid and lower ranking management employees and other white-collar workers. For example, in Broward County, which includes Miami-Fort Lauderdale-West Palm

Beach Metropolitan Statistical Area, the mean annual wage for full-time workers was \$75,700 in 2024, according to the Bureau of Labor Statistics. Therefore, when Broward County's mean wage is used as the relevant benchmark, an employer may enter into an enforceable non-compete agreement with employees earning at least \$151,400, which would capture many white-collar workers well below senior management levels.

Requirements to Enforce Non-Compete Agreements

An employer must meet the following requirements to be able to enforce non-compete agreements against covered individuals:

- The non-compete agreement requires the employee to agree not to assume a role with a prospective employer for which (i) the employee would provide services similar to the services provided to his or her current employer during the 3 years preceding the non-compete period or (ii) it is reasonably likely the employee would use confidential information or customer relationships of his or her current employer.
- The employee was (i) advised, in writing, of the right to seek counsel before execution of the non-compete agreement, (ii) provided certain advanced notice of the agreement and (ii) acknowledged, in writing, that in the course of his or her employment, the employee will receive confidential information or customer relationships.

Relief Granted for Potential Breach of Non-compete

The CHOICE Act makes it easier for an employer to obtain an injunction against a former employee who may be in breach of a non-compete. Upon an employer's petition seeking enforcement of a non-compete agreement against an employee or former employee, the CHOICE Act *requires* a court to preliminarily enjoin such employee or former employee from providing competing services to any business during the non-compete period.

A court may modify or dissolve the injunction if the former employee can prove by clear and convincing evidence that:

- The former employee will not engage in prohibited competitive conduct or will not use the former employer's confidential information or customer relationships,
- The former employer failed to pay or provide the consideration provided in the non-compete arrangement following a reasonable opportunity to cure, or
- The new employer seeking to hire the former employee is not engaged in and is not planning or preparing to engage in business activity similar to the enforcing employer in the geographic area specified in the non-compete agreement.

Meridian Comment

The CHOICE Act marks a significant shift in sentiment expressed by states regarding the enforcement of non-compete agreements. In recent years, some states have enacted legislation that prohibits or restricts the use of non-compete agreements. In contrast, Florida is the first state to strengthen non-compete agreements. So far, no other state has signaled an interest in following Florida's example.

Whether employers seek to enter into an extended non-compete period for covered individuals remains to be seen. Competitive pressures may make it problematic to entice a prospective employee to agree to a 4 year non-compete period without a substantial pay premium.

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