

# Florida Will Soon Be Friendliest State in Country For Enforcing Non-Compete Agreements: 3 Key Steps for Employers

A Practical Guidance® Article by Charles S. Caulkins, Jonathan Crook, and Lindsay Massillon, Fisher & Phillips LLP



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Florida has long been where people go to unwind—and soon it will also be a place where businesses can operate with more peace of mind, thanks to a new law that will make it the most enforcement-friendly state in the country for non-compete and garden leave agreements. The “Florida Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth (CHOICE) Act,” passed both the Florida House and Senate on April 24 and expected to be signed by Governor DeSantis, will reshape the state’s laws on restrictive covenants starting on July 1, 2025. The Act

does not amend any current statutes, but instead provides more certainty to employers looking to enforce certain non-compete agreements and agreements offering “garden leave” (a period of time where an employee is not required to perform any work but is still paid their salary and benefits in return for not accepting employment elsewhere). Here is what employers should know about the CHOICE Act and three steps you can take to prepare.

## Overview of the CHOICE Act

While many federal and state regulatory efforts seek to curb non-compete agreements, the CHOICE Act goes the other direction and creates a presumption that “covered” non-compete agreements and garden leave provisions are enforceable and do not violate public policy. Importantly, the law **requires** courts to issue an injunction unless the former employee or poaching employer can prove the new employment will not result in unfair competition.

## Who Is Covered?

The Act defines a “covered employee” as any employee or contractor who works primarily in Florida or works for an employer with their principal place of business in Florida who earns or is reasonably expected to earn a salary greater than twice the annual mean wage of either:

- The county where the company has its principal place of business –or–
- The county where the employee resides if the employer’s principal place of business is not in the state

Notably, “salary” does not include discretionary incentives or awards or anticipated but indeterminable compensation, like bonuses or commissions. The Act excludes from this definition any person classified as a “healthcare practitioner” under Florida law.

## What Agreements Are Covered?

The new law covers two types of agreements:

### Garden Leave Agreements

A garden leave agreement will be fully enforceable provided that:

1. The employee is advised, in writing, of the right to seek counsel prior to executing the agreement and has at least seven days to review the agreement before execution.
2. The employee and employer agree to provide up to four years advance, express notice before terminating employment (e.g., the “notice period”).
3. The employer agrees to pay the employee their regular base salary and benefits for the duration of the notice period.
4. The employee acknowledges, in writing, that in the course of their employment, the employee will receive confidential information or information about customer relationships.
5. The garden leave provisions provide that:
  - o After the first 90 days of the notice period, the covered employee does not have to provide services to the covered employer.
  - o The covered employee may engage in nonwork activities at any time, including during normal business hours, during the remainder of the notice period. –and –
  - o The covered employee may, with the permission of the covered employer, work for another employer while still employed by the covered employer during the remainder of the notice period.

### Non-Compete Agreements

Likewise, a non-compete agreement will be fully enforceable provided that:

1. The employee is advised, in writing, of the right to seek counsel prior to executing the agreement and has at least seven days to review the agreement before signing.

2. The employee acknowledges, in writing, that in the course of their employment, the employee will receive confidential information or information about customer relationships.
3. The employee agrees not to assume a role with or for another business in which the employee would provide services similar to the services provided to the covered employer during the three years preceding the non-compete period, or in which it is reasonably likely the employee would use confidential information or customer relationships.
4. The non-compete period does not exceed four years. –and–
5. 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.

Notably, there are no restrictions on the geographic scope of a covered non-compete agreement.

## What Else?

- Employers may introduce these agreements either at the beginning of employment or during the course of employment, provided that the employee still has seven days to consider signing the agreement before the offer of employment (or continued employment) expires.
- Employers may also elect to shorten a period of garden leave at their discretion by providing the employee with 30 days’ advanced written notice.
- The bill also states that, if the covered employer has a principal place of business in Florida and uses a covered agreement expressly governed by Florida law, then “if any provision of this section is in conflict with any other law, the provisions of this section govern.” What happens if the employee of such a covered employer lives in a state that bans non-compete agreements outright, like California? This situation is very likely to play out in the courts, and it may come down to where the first suit is filed.

## Remedies Available

Of course, drafting and executing these agreements means very little if employers have to jump through hoops to enforce them. However, the CHOICE Act makes obtaining an injunction against a breaching employee a lot less burdensome because it requires courts to issue a preliminary injunction against a covered employee.

A judge may only modify or dissolve the injunction if the covered employee—or prospective employer—proves by

clear and convincing evidence (which must be based on non-confidential information) that:

- The employee will not perform similar work during the restricted period or use confidential information or customer relationships
- The employer failed to pay the salary or benefits required under a covered garden leave agreement, or failed to provide consideration for a non-compete agreement, after the employee provided a “reasonable opportunity” to cure the failure –or–
- The prospective employer is not engaged in (or preparing to engage in) a similar business as the covered employer within the restricted territory

If the employee engages in “gross misconduct” against the covered employer, the covered employer may reduce the salary or benefits of the covered employee or “take other appropriate action” during the notice period, which would not be considered a breach of the garden leave agreement.

## 3 Key Steps For Employers

Assuming this bill is signed into law, Florida will become by far the most enforcement-friendly state in the country for non-competes and garden leave provisions starting July 1, 2025. (Arguably, it already was, but this law would go substantially further than the current Florida restrictive covenants statute.) Employers should prepare for this new day by considering the following three steps:

- **Review existing agreements** and consider whether your agreements need to be modified to comply with the Act’s definition of a “covered” garden leave or non-compete agreement.
- Understand that **restrictive covenants can still be used and enforced against employees who earn less than two times the mean salary** for the applicable county. However, employers will not have an entitlement to a preliminary injunction without proving a legitimate business interest and irreparable harm.

- It is always a good practice to **review your company’s confidentiality protocols** and make sure your policies regarding trade secrets, customer information, and confidential information are comprehensive, up to date, and legally compliant. While the CHOICE Act only requires that the employee acknowledge access to confidential information, the more guardrails in place, the better.

## Conclusion

If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, any attorney in our [Florida offices](#), or any attorney in our [Employee Defection and Trade Secrets Practice Group](#).

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### **Charles S. Caulkins, Partner, Fisher & Phillips LLP**

Charles Caulkins is a partner in the Fort Lauderdale office and represents employers nationally in labor and employment law matters.

He advises employers on the development and implementation of preventive labor relations programs, including management education and training to avoid charges and lawsuits, protect trade secrets, and resolve disputes. He regularly counsels employers on union-related matters. He also handles employment-related litigation and arbitrations before state and federal courts and administrative agencies involving claims of discrimination, wrongful discharge, breach of contract, Occupational Safety and Health Administration (OSHA) and other statutory claims.

He is "AV" Peer Review Rated by Martindale-Hubbell. He has also been listed in *The Best Lawyers in America* since 2006 and in *Chambers USA, America's Leading Business Lawyers* since 2003. Charles has been recognized as an Employment Law – Management Lawyer of the Year by *Best Lawyers in America* since 2006 and Employment Law – Management and Labor Law – Management Lawyer of the Year 2021 by *Best Lawyers in America*. Selection to *Lawdragon's* 500 Leading U.S. Corporate Employment Lawyers (2020) – "Hall of Fame" - Labor & Employment, Collective Bargaining. Charles has also been named one of «The Nation's 100 Most Powerful Employment Attorneys» by *Human Resources Executive Magazine* every year since 2010.

Charles has devoted significant time to community service. He currently is the Chair of the Florida Chamber of Commerce. He is a founding member and past President of the Academy of Florida Management Attorneys and past Chair of the Greater Fort Lauderdale Chamber of Commerce. He was also honored by Neighbors 4 Neighbors for his volunteerism within the South Florida region.

### **Jonathan Crook, Partner, Fisher & Phillips LLP**

Jonathan Crook is a Partner in the Charlotte office and a former legal tech entrepreneur.

In 2022, after having practiced for several years with a national employment law firm, Jonathan founded Blue Pencil Box – a knowledge management platform focusing on the law of non-compete agreements and restrictive covenants.

Jonathan programmed practice automation tools and authored daily updates on case law, legislation, and regulatory activity, keeping users at the cutting edge of a constantly shifting area of law, all while growing a new venture as a bootstrapped solo entrepreneur.

[fpSOLUTIONS](#), a new venture powered by Fisher Phillips, acquired Blue Pencil Box in 2023. Jonathan continues to provide content and insights through Blue Pencil Box on the fpSOLUTIONS platform.

Jonathan also maintains a national legal practice focusing on employee defection, trade secrets, non-compete agreements, and other restrictive covenants. He uses personal experience as a former business owner to help clients achieve their goals while navigating a complex legal landscape.

### **Lindsay Massillon, Of Counsel, Fisher & Phillips LLP**

Lindsay Massillon is an experienced litigator who regularly defends employers against all employment-related claims, including discrimination, harassment, FLSA violations, whistleblower suits, wrongful termination, FMLA violations, and those related to non-compete agreements. Lindsay also advises on policies and procedures along with termination, pay structure, and human resource matters. Her experience includes conducting comprehensive internal workplace investigations as well as payroll audits.

Prior to joining Fisher Phillips, Lindsay worked for a South Florida-based law firm where she represented private and public employers of all sizes in employment litigation as well as provided critical advice and counsel on general employment matters.

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