

# Florida's New, Pro-Employer Non-Compete Law Rife with Ambiguities That Will Vex Compliance Teams

July 22, 2025

John Russell



**Florida courts soon could see a plethora of challenges to a new state law that gives employers more power to hold certain workers to non-compete agreements for up to four years.**

Several employment-law experts say the law is unclear and conflicts in important ways with an existing Florida law that limits non-compete agreements to two years.

The new law—known as the CHOICE Act (short for Contracts Honoring Opportunity, Investment, Confidentiality and Economic Growth)—went into effect July 1 after passing the Florida House and Senate by wide margins this spring. Gov. Ron DeSantis allowed it to become law without his signature.

With passage of the CHOICE Act, Florida is bucking a national trend toward reining in the use of non-competes, which critics say unfairly limit workers' ability to find new jobs in their professional fields and maximize their incomes.

Four states—California, Minnesota, North Dakota, and Oklahoma—have adopted near-total bans on non-competes, and 34 states place restrictions on their use. In Washington, D.C., the Federal Trade Commission adopted a non-compete ban last year, though it hasn't gone into effect because of pending court challenges.

While the new Florida law is intended to benefit businesses, employment attorneys say it's sure to create headaches for their legal and HR teams. That's because it will stand side by side with a state law that has been in place for three decades defining reasonable restrictions on non-compete agreements, said Justin Beyer, a partner in the Chicago office of Saul Ewing.

“We think that the CHOICE Act is going to be ripe for litigation for some time,” he said.

That earlier law, known as Florida Statute 542.335, has been on the books since 1996 and remains so. Among the sticky issues: It says non-competes longer than two years are presumptively invalid, while the new law sets out that non-competes are presumptively valid.

The CHOICE Act covers highly paid employees, who are often privy to a company's strategic plans and trade secrets. Specifically, it covers workers who earn more than twice their county's annual mean wage. That amount varies widely throughout the state, but the threshold is roughly between \$80,000 and \$150,000 a year.

Notably, it excludes licensed health care practitioners, in a move to protect access to care. Still, doctors, nurses and other health care workers would continue to be covered under the 1996 law.

The two Florida laws, existing side-by-side, will present a host of issues that courts will need to iron out, said Steven Appelbaum, a partner in the Fort Lauderdale office of Saul Ewing who worked with Beyer on a lengthy May 16 client note outlining potential problems.

For example, the CHOICE Act does not explain whether an employee can take a position with a non-competitive employer. It doesn't explain whether it applies to certain independent contractors. Nor does it define “nonwork activities,” leaving an open question on what precisely is permitted.

“There's a lot to unpack and to understand as cases start to be filed challenging the validity and reach and depth and scope of this CHOICE Act,” Appelbaum told Law.com.

Another issue that could arise: Some companies are likely to try to enforce non-competes by citing the more permissive language in the CHOICE Act, but employees might say the agreements were governed by the less-permissive language of the previous law.

“There's where I can see some of the conflicts arising, where it's unclear which statute the employer was intending to proceed under,” said Joyce Ackerbaum Cox, a partner in the Orlando office of BakerHostetler. “So employers need to be very careful.”

One way to avoid that problem, she said, is to make sure the agreements are only being used for employees who are covered under the CHOICE Act, and to spell out in writing exactly how the employees are covered.

Employers must give the covered employee at least seven days to consider the agreement and must inform employees in writing of their right to seek legal counsel before signing the agreement, she said. In addition, employees must also acknowledge in writing that they will receive confidential information or customer relationships during their employment.

Another potential problem: The CHOICE Act does not spell out whether it applies to non-compete agreements entered into before the new law took effect on July 1.

“It is unclear from the statutory language whether the act only applies to restrictive covenants entered on and after July 1, 2025,” according to a July 9 note from the Fort Lauderdale, Florida-based Mavrick Law Firm, which represents employees in litigation over non-competes.

Yet another issue: The CHOICE Act applies to employers with their principal place of business in Florida, even if a worker is located in another state, such as California, which bans them in almost all circumstances.

“The [CHOICE] Act expressly preempts any state law that conflicts with its terms, setting up a potential wave of litigation over jurisdictional boundaries,” according to a July 14 client alert from the San Francisco-based law firm Morrison Foerster.

The act's supporters, including business and employer groups, said the new protections will attract business to the state by providing stronger enforcement for trade secret and intellectual property. They said it would likely encourage investment and expand economic development.

“In essence, Florida is swinging its doors wide open for business, in an attempt to foster even more investment in the Sunshine State,” Paige Newman, a labor and employment lawyer in the West Palm Beach, Florida, office of Akerman, wrote to clients on May 16.

Opponents, including employee groups and some economists, said it could create a chilling effect on worker mobility, thus stifling entrepreneurship and innovation. Sass Law Firm, a Tampa Bay, Florida, employee-rights firm, said the law would be “devastating” for Florida workers.

And some predict it could lead to a stampede of high-paid workers to other states.

“For talented workers, innovators and entrepreneurs, the only ‘choice’ is to leave the state for a more favorable economic climate,” Rachel Arnow-Richman, a law professor at the University of Florida, wrote in the Tampa Bay Tribune on May 29, urging DeSantis to veto the bill.

Some employment lawyers say the CHOICE Act represents a momentous swing in a longstanding area of law. Reed Smith’s “Employment Law Watch” alert on July 1 called the new restrictions a “seismic shift” in non-compete law.

But many say they do not expect Florida’s law to change the tide nationally, despite its sweeping provisions.

“It is more of a confirmation that Florida has made the conscious decision to take a stand and make a show of force that it wants to be seen as one of, if not the most, business-friendly states in the country,” said Andrew Reed, a partner in the Houston office of Troutman Pepper Locke.