

## A Guide to Enforcing Florida Non-Compete Agreements

For years, enforcing a non-compete in Florida meant navigating a complex web of "reasonableness." That all changed on July 1, 2025. With the passage of the new CHOICE Act, Florida has created a powerful fast-track for enforcing non-competes against key, high-earning employees. This new law establishes a two-track system, making it critical for businesses to understand which path their agreements fall on. This guide will help you navigate the new landscape and determine what is required to enforce your restrictive covenants.

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### **Step 1: Determine Which Law Applies**

The first step is to determine whether your agreement falls under the new CHOICE Act or the traditional Florida statute.

#### **CHOICE ACT**

The enhanced protections of the CHOICE Act are only available for a "covered employee." This requires meeting the following criteria:

- **Salary Threshold:** A "covered employee" is an individual whose "salary" is greater than twice the annual mean wage of the relevant Florida county. The Act defines "salary" very narrowly; it includes base pay and the value of non-cash benefits but specifically *excludes* discretionary payments like bonuses, commissions, tips, and health care benefits. Therefore, a highly compensated salesperson who earns most of their income from commissions may not qualify.
- **Location:** The employee must have their "principal place of work" in Florida, or the employer's principal place of business must be in Florida and the non-compete must explicitly state that it is governed by Florida law.
- **Timing:** The CHOICE Act will likely be interpreted by courts to *only* apply to non-competes signed **after** July 1, 2025.

In addition, to be enforceable, the CHOICE Act requires that the employer provide specific notices to the employee. The agreement should contain acknowledgements that the employee:

- Received a copy of the agreement at least seven days before the expiration of their employment offer.
- Was advised in writing of their right to seek independent legal counsel before signing.

## **The Traditional Statute (Fla. Stat. § 542.335)**

The traditional legal framework continues to govern the majority of the workforce. This path applies to any employee who does *not* meet the "covered employee" salary threshold and likely applies to any agreement signed **before** July 1, 2025. It is also important to note that healthcare workers will fall under the traditional statute, regardless of their salary.

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### **Step 2: Understand the Enforcement Standard**

The standard for enforcing an agreement differs significantly between the two tracks.

#### **Enforcement Under the CHOICE Act**

For employers, the CHOICE Act offers powerful advantages for enforcement:

- **Mandatory Injunctions:** The most significant feature is the remedy for a breach. Upon an employer's request, a court **must** issue a preliminary injunction to stop the employee from violating the agreement. This removes the traditional, multi-factor legal test for injunctions and makes it much easier to get immediate relief.
- **Longer Duration:** The Act permits a post-employment non-compete period of up to **four years**, a substantial increase from the two-year presumptive limit under the traditional statute.

#### **Enforcement Under the Traditional Statute**

Agreements under this statute are judged based on a "reasonableness" standard. To enforce a non-compete, an employer must meet the following criteria:

- **Legitimate Business Interest:** The restrictive covenant must protect a "legitimate business interest," such as trade secrets, confidential business information, substantial customer relationships, or extraordinary training.
- **Reasonable Scope:** The agreement must be reasonable in duration, geographic scope, and the line of business being restricted.
  - **Duration:** Covenants of six months or less are presumptively reasonable, while those lasting over two years are presumptively unreasonable.
  - **Geographic Scope:** The scope should be limited to the areas where the employee actually operates.
  - **Line of Business:** Restrictions must be limited to activities that directly compete with the employer.

If a court finds a restriction to be overly broad, it is required by law to modify, or "blue-pencil," the term and enforce it to the maximum extent possible.

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## How We Can Help

The evolving legal environment underscores the importance of proactive legal counsel. Our firm regularly helps clients with the following:

- **Agreement Drafting and Review:** We can draft enforceable non-compete agreements under both the CHOICE Act and the traditional Florida statute, or review your current agreements to ensure compliance.
- **Enforcement Strategy:** If you need to enforce an agreement, we can evaluate its validity and develop a litigation strategy tailored to the most recent case law.
- **Advice on Tricky Hiring:** If you are considering hiring a key employee from a competitor who is subject to a non-compete, our team can help you analyze the risk and navigate whether that agreement can be enforced.
- **Litigation Defense:** If you or a new employee have received a threatening letter from a competitor, we can help respond and defend you in any subsequent litigation.

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## Recommendation: Review and Update Your Agreements

The CHOICE Act provides employers with a powerful new tool for protecting their business interests through non-compete agreements. We strongly recommend that all clients review their existing restrictive covenants and update them to reflect these changes in the law. By properly drafting agreements for high-earning employees who meet the "covered employee" criteria, you can avail your business of the stronger and more certain enforcement mechanisms now available.