

# Employment in Financial Services

## Contributing Editor

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## 01. What is the primary regulatory regime applicable to financial services employees in your jurisdiction?

### Mexico

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Articles 5 and 123 of the Constitution of the United Mexican States provide express protection of labour rights and establish that legal rights are protected by the Federal Labour Law (the FLL).

Pursuant to article 5 thereof, no-one can be stopped from providing services in industry, commerce, or any other activity, provided it is not illegal; thus, individuals may only be prohibited from performing their duties as financial services employees if there is a legal justification. The activity may only be prohibited by a judicial declaration. Also, the law will define occupations that require a licence, the conditions to be met to obtain that licence and the issuing authorities.

Furthermore, no contract or provision that affects an individual's freedom will be enforced.

All employers and employees within the private financial services sector are primarily subject to the FLL. Additionally, financial entities and their employees are subject to different laws and general provisions depending on the entities' core business and activities, such as:

- Law to Regulate Finance Associations;
- Credit Institutions Law;
- General Provisions of Credit Institutions, issued by the supervisory authorities;
- Law to Regulate Credit Information Entities;
- General Law of Auxiliary Credit Organizations and Activities;
- Investment Funds Law;
- Popular Savings and Credit Law;
- Law to Regulate Technological Finance Institutions;
- General Provisions of Technological Finance Institutions, issued by the supervisory authorities;
- Law of Transparency and Promotion of Competition in Guaranteed Credit;
- Securities Market Law;
- Law for the Transparency and Regulation of Financial Services;
- Federal Law for the Prevention and Identity of Transactions with Illegally Obtained Resources;
- General Provisions applicable to securities operations carried out by counsel, managers and employees of financial entities and other obligated parties, issued by the supervisory authorities;
- Insurance and Bonding Institutes Law; and

- Insurance and Bonding Agents Regulations.

Some of the financial entities regulated are the following (Financial Entities):

- controlling entities (controlling entities of financial groups);
- credit institutions;
- credit information entities;
- multiple purpose financial entities;
- exchange bureaus and brokerage houses;
- auxiliary credit organisations;
- technological finance institutions;
- investment funds;
- financial cooperative associations and community finance entities; and
- insurance and bond institutes.

Authorities that regulate and supervise the compliance of financial laws and provisions are the National Banking and Securities Commission (CNBV), National Insurance and Bonding Commission (CNSF), National Commission of Retirement Savings Fund (CONSAR), National Commission for Financial Service Consumer Protection, Bank of Mexico, and the Ministry of Finance and Public Credit (SHCP).

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## Switzerland

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Employment law in Switzerland is based mainly on the following sources, set out in order of priority:

- the Federal Constitution;
- Cantonal Constitutions;
- public law, particularly the Federal Act on Work in Industry, Crafts and Commerce (the Labour Act) and five ordinances issued under this Act regulating work, and health and safety conditions;
- civil law, particularly the Swiss Code of Obligations (CO);
- collective bargaining agreements, if applicable;
- individual employment agreements; and
- usage, custom, doctrine, and case law.

Depending on the regulatory status of the employer and the specific activities of financial services employees, respectively, Swiss financial market laws may also apply. They are, in particular, the Federal banking, financial institutions and insurance supervision regulations.

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## **12. Are there any particular rules or protocols that apply when terminating the employment of an employee in the financial services sector, including where a settlement agreement is entered into?**



## Mexico

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Under the Constitution and the FLL, an employee has the right to secure employment (employment stability right) and an employer cannot terminate an employment contract without legal cause.

An employer may only dismiss an employee under one or more of the legal causes provided for in article 47 of the FLL (eg, lack of ethics, dishonesty, violence, harassment, absence more than three times in a month without authorisation, disobedience, and intoxication). Dismissal should be carried out within the one month after the employer becomes aware of the legal cause for termination (statute of limitations).

The FLL requires employers to provide the employee with a written notice of dismissal in which the date and causes are expressly described. A lack of written notice makes the termination unlawful and triggers the severance obligation described below.

In addition, financial entities may end the employment of individuals without notice in the following circumstances:

- if a general manager or officer no longer complies with the legal requirements to occupy their position (see question 2);
- if the CNBV or the CNSF, as applicable, disqualifies, removes, or relieves individuals from their positions; and
- if a brokerage house's proxies are no longer authorised by the CNBV.

If there are no legal grounds to justify the termination and an employee is dismissed, the dismissal is wrongful and the employee has the right to:

- be reinstated (article 49 of the FLL establishes the cases where an employer is exempt from reinstating an employee, for example employees of trust); or
- a severance payment (three months of salary, plus 12 days of salary for each year of service capped at twice the general minimum wage of the geographic area where the employee rendered services, plus 20 days of salary per year of service, and, if applicable, back pay).

These obligations are only enforceable (reinstatement and payment of severance) if the dismissal is deemed wrongful by the labour authorities in their corresponding resolution. Nevertheless, if there are no legal grounds that justify the termination, it is common practice to pay the severance in advance if there is no intention to reinstate the employee after termination.

When termination occurs, financial entities must inform the self-regulated bodies to revoke powers of attorney within five days. The self-regulated body must then inform the CNBV of the revocation. For the removal or resignation of the general manager and officers, financial entities must inform the corresponding authority within five to ten days, depending on the type of financial entity.

For the termination of employment of employees in general positions, there is no particular document to execute other than a termination document (resignation or employment termination agreement and release).

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## Switzerland

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There are no specific rules or protocols that apply when terminating the employment of an employee in the financial services sector. However, because changes in the strategic and executive management of, in particular, regulated companies such as banks, insurance companies, securities firms, fund management companies, managers of collective assets or asset managers are subject to a prior authorization by FINMA, the timing of termination and re-hiring of particular persons should be considered.

The general rules on the termination of an employment relationship apply under Swiss law: any

employment contract concluded for an indefinite period may be unilaterally terminated by both employer and employee, subject to the contractual or (if no contractual notice period was agreed) statutory notice periods for any reason (ordinary termination).

The termination notice needs to be physically received before the notice period can start, meaning the notice needs to be received by the employee before the end of a month so that the notice period can start on the first day of the next month. If notice is not received before the end of the month, the notice period would start the month following the receipt of the notice. A termination notice might be either delivered by mail or personally.

Swiss law does not provide for payment in lieu of a notice period. The only option in this regard is to either send the employee on garden leave or to agree within the termination agreement to terminate the employment relationship per an earlier termination date than the one provided for in the termination notice.

As a general rule, an employment contract may be terminated by either party for any reason. However, Swiss statutory law provides for protection from termination by notice for both employers and employees, distinguishing between abusive and untimely notices of termination.

Based on social policy concerns, the employer must observe certain waiting periods, during which a notice cannot validly be served (so-called untimely notice). Such waiting periods apply (art. 336c CO), for example, during compulsory military or civil defence service, full- or part-time absence from work due to illness or an accident, or during an employee's pregnancy and 16 weeks following the birth of the child. Any notice given by the employer during these waiting periods is void. Any notice given before the respective period is effective, but once the special situation has occurred and for the period it lasts, the running of the applicable notice period is suspended and only continues after the end of the period in question.

In addition, Swiss civil law defines certain grounds based on which terminations are considered abusive (article 336 CO). Termination by the employer might be considered abusive (eg, if it is based on a personal characteristic of the other party (eg, gender, race, age), or if the other party exercises a right guaranteed by the Swiss Federal Constitution (eg, religion or membership in a political party) unless the exercise of this right violates an obligation of the contract of employment or is seriously prejudicial to the work climate). If the employer abusively terminates the employment contract, the employer has to pay damages to the employee and a penalty of up to six months' remuneration (article 336a CO). Nevertheless, an abusive termination remains valid.

Regarding settlement agreements, Swiss employment law allows the conclusion of such agreements, but there are strict limits on the parties' freedom of contract. Termination agreements may not be concluded that circumvent statutory provisions on employee protection. According to Swiss case law, termination agreements are usually valid and enforceable if both parties make real concessions, and if the agreement is also favourable for the employee. To conclude a termination agreement initiated by the employer, the employee must also be granted a sufficient reflection period. No further formalities need to be observed when concluding termination agreements, although it is generally advisable to have them in writing.

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