

Employment in Financial Services

Contributing Editor

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03. What documents should be put in place when engaging employees within the financial services industry? Are any particular contractual documents required?

Ireland

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The following documents should be in place:

- written statement of terms of employment e.g., a written contract of employment that complies with the Terms of Employment (Information) Act 1994-2014 and the European Union (Transparent and Predictable Working Conditions) Regulations 2022;
- grievance and disciplinary policy;
- protected disclosures policy;
- dignity at work policy (anti-harassment and bullying prevention);
- safety statement; and
- where possible, an employee handbook that details all the statutory leave policies and other bespoke policies of the RFSP.

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Switzerland

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No special contractual documents are required when engaging employees within the financial services industry.

However, it is generally recommended to conclude a written employment contract with each employee. FINMA, for instance, requires a copy of employment contracts concluded with senior management of regulated entities.

In particular, the employment contract should reference the employer's (regulatory) set of directions and the employee's obligation to comply with said instructions. In addition, because regulated companies such as banks, securities firms, fund management companies, managers of collective assets or asset managers are required to obtain authorisation from FINMA before the engagement of key personnel, it may be sensible to include a condition precedent relating to FINMA's acceptance of the relevant employee in the employment contract.

The mandatory, partially mandatory, and optional elements of an individual employment contract are outlined in article 319 et seq of the CO (in particular regarding remuneration, working time, vacation, and incapacity for work). Further regulations may apply based on collective bargaining agreements.

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As a matter of general UK employment law, employers must give employees written particulars of certain terms and conditions of employment. This is known as a "section 1 statement" after section 1 of the Employment Rights Act 1996, which sets out the mandatory information that employers must give to employees no later than the first day of their employment. This includes fundamental information such as the names of the employer and employee; the date of commencement of employment; the rates and timing of pay; and working hours. Other prescribed particulars (such as information regarding pensions, collective agreements and training) can be provided to employees in instalments within two months of commencement of employment. Typically, a written employment contract will contain the relevant information to satisfy these requirements.

Financial services employers should ensure that, in addition, their employment contracts reinforce the requirements of SM&CR. This will help the employer manage the employment relationship in a manner compliant with SM&CR and demonstrate to the relevant regulators the employer's commitment to compliance with SM&CR. The employment contract will usually include, therefore, additional provisions regarding the completion of SM&CR-compliant background checks; confirmation of the employee's regulated function (eg, their SMF or certification function); required regulatory standards of conduct; cooperation with fitness and propriety assessments; and tailored termination events.

In addition, all senior managers must have a statement of responsibility setting out their role and responsibilities. Certain firms must also allocate certain regulator-prescribed responsibilities (prescribed responsibilities) among senior managers. It is common to set out a senior manager's regulatory responsibilities in their employment contract.

Dual-regulated firms must also ensure that individuals approved to carry out a PRA-designated SMF are subject to any specific contractual requirements required by the PRA. For example, depending on the type of firm, a firm may be required to ensure that the relevant individual is contractually required to comply with certain standards of conduct, such as to act with integrity and with due care and skill (among other requirements).

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