



## Financial Services

### *Overview*

**Financial institutions are subject to unique laws, regulations, industry rules and codes of ethics and conduct. To maintain your position as a dynamic and successful participant in the sector, you need lawyers with deep experience who are steeped in the industry to help protect your rights as an employer, maintain effective and efficient employment policies and procedures, and resolve disputes while advancing your specific business goals.**

Attorneys in Fisher Phillips' Financial Services Industry team have countless years of collective experience helping employers – including broker-dealers, RIAs, asset managers, investment banks, federal and state banks, credit unions, and individual financial industry professionals – successfully navigate federal, state and local employment laws, financial industry rules and regulations, and myriad legal risks unique to this sector. Located in major U.S. financial markets, our practice involves matters both unique to the financial services industry as well as those routinely encountered by all employers, including, for example:

### *Transition of Financial Professionals*

- Strategic recruiting and risk assessment involving transition of financial professionals and teams
- Transitions under the Protocol for Broker Recruiting and Non-Protocol transitions
- Employee defection and broker raiding and pirating
- TRO/preliminary injunction defense and prosecution
- FINRA Rule 13804 Expedited Hearings on Permanent Injunctive Relief
- FINRA arbitration damages hearings

## ***Industry Agreements***

- Non-compete, non-solicitation, non-recruiting and confidentiality agreements
- Trade secrets and non-public Information regarding clients' personal and financial information
- Book Sale Agreements and Retirement and Book of Business Transition Agreements
- Financial Professional Team Agreements and "Silver Platter" Agreements
- Deferred Compensation Programs
- Promissory Notes and Up-Front and Back-End Bonus Agreements

## ***Compliance***

- Fair Credit Reporting Act (FCRA), fair chance, and industry laws relating to background checks
- Cybersecurity, GLBA, Reg. S-P, CCPA and other data privacy and protection statutes
- Registered representative terminations and Form U5 disclosures
- CFP and other certified practitioner obligations & credentialing
- FINRA and state securities licensing and registrations issues
- Rule 8210 Information Requests and Investigations

## **ADVICE, COUNSELING AND COMPLIANCE**

While we counsel on matters specific to the financial services industry, such as providing advice on the multi-faceted aspects of strategic recruiting, navigating financial professional regulatory issues and developing key producer transition programs, we also provide routine employment counseling from a financial industry specific perspective and knowledge base. We provide essential day-to-day advice on HR matters and compliance obligations, ensure your policies and procedures are sound and help you navigate crises and extraordinary events such as key executive and financial professional departures, reorganizations, employment aspects of mergers and acquisitions, and reductions in force. Keeping your unique objectives and culture top of mind, we tailor our advice to suit your distinct objectives and are committed to efficiency, transparency and responsiveness in every matter we handle.

We review and draft policies governing all aspects of the employer – employee relationship, including worker classification schemes and compensation plans, recordkeeping, and other regulatory requirements. Team members develop and implement best practices including codes of ethics, employee discipline, and policies on discrimination, harassment, diversity, pay equity, cybersecurity and data privacy to proactively reduce any potential exposure.

With the benefit of our experience in responding to compliance audits brought by federal, state and local agencies, we'll work with you to review worker classification schemes and available

exemptions, compensation plans (including consideration of Dodd-Frank Act and DOL regulations), pay equity and benefits, and wage and hour issues.

We'll also help conduct privileged internal investigations into a wide range of matters, including pay structures and allegations of employment discrimination or harassment.

## **LITIGATION, ARBITRATIONS, AGENCY PRACTICE AND DISPUTE RESOLUTION**

Our team routinely defends industry employers in federal and state court trials (including class and collective actions) and FINRA arbitrations involving:

- Form U5 defamation claims and expungements
- The Sarbanes-Oxley Act (SOX)
- Whistleblowers
- State wage and hour and pay-equity laws
- The Fair Labor Standards Act (FLSA)
- Employment discrimination, retaliation, and “hostile work environments”
- Non-compete, non-solicitation and confidentiality agreements and mandatory arbitration clauses
- Employee raiding and team moves
- Employment termination, including breach of contract, and wrongful termination claims
- Government investigations
- Trade secret agreements
- The Americans with Disabilities Act (ADA)

In addition to more traditional employment litigation, many of the litigation matters handled by our team involve rapid deployment of resources throughout the United States to seek or defend against temporary restraining orders (TROs), emergency injunctive orders, preliminary injunctions and other relief when financial professionals transition to an industry competitor. These and other intra-industry disputes often involve complex claims of misappropriation of trade secrets, employee raiding, violations of restrictive covenants, unfair competition, tortious interference with contract or prospective economic relations, breach of fiduciary duty, and aiding and abetting. Collectively, our team members have been involved in disputed matters involving well over a thousand financial professionals. Many of our team members have extensive experience with recurring opposing counsel and recurring competitors and have first-hand knowledge of their strengths and weaknesses, as well as their specific concerns and litigation histories. We bring to our clients the benefit of this knowledge and these relationships in a way that helps us work with them to meet or exceed business leaders' important goals.

## **CONFERENCE ON RECRUITING LITIGATION IN THE FINANCIAL SERVICES INDUSTRY**

Since 2003, members of the Financial Services Industry Team have hosted and moderated a highly-regarded, invitation-only conference on recruiting litigation in the financial services industry and related topics. The conference brings together industry leaders and legal practitioners from across the country to address timely issues in a highly interactive, in-depth roundtable discussion.

## ***Insights***

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INSIGHTS

11/03/23

### **Workplace Law Update: 10 Essential Items on Your November To-Do List**

Alba V. Aviles, Steven M. Bernstein, J. Randall Coffey, Patrick J. Collopy, Tami Essis Culkar, Theresa D'Andrea, Benjamin M. Ebbink, Scott Fanning, Chantell C. Foley, Edward F. Harold, Ralph Hua, Wendy Hughes, Jang Hyuk Im, David S. Jones, Jennifer S. Kiesewetter, Joshua Klein, Alexandra LaCombe, Richard R. Meneghello, Steve A. Miller, Joshua D. Nadreau, Lisa Nagele-Piazza, Ashton M. Riley, Shanon R. Stevenson, David J. Walton, Sarah Wieselthier, Spencer W. Waldron

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INSIGHTS

10/30/23

### **White House Issues Sweeping AI Executive Order: 10 Things Employers Need to Know**

Benjamin M. Ebbink, Wendy Hughes, David S. Jones, Richard R. Meneghello, David J. Walton

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EVENT

09/27/23

### **AI Strategies @ Work: Preparing Business Leaders for Tomorrow**

Richard R. Meneghello, John M. Polson, Evan Shenkman, David J. Walton, Erica G. Wilson

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NEWS

04/24/23

### **Regional Managing Partner of Firm's Philadelphia Office Recognized Among the 2023 Pennsylvania Power 100**

Christopher P. Stief

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NEWS

03/14/23

### **Wage and Hour Co-Chair Discusses Potential Payroll Fallout from Silicon Valley Bank**

Kathleen McLeod Caminiti

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NEWS

02/27/23

## Cleveland Partner Discusses New Federal Law That Loosens Hiring Restrictions for Banks

Richard A. Millisor

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INSIGHTS

10/31/22

### FP's Workplace Law Forecast 2023

Davis C. Bae, Phillip C. Bauknight, Cheryl L. Behymer, Steven M. Bernstein, Sheldon J. Blumling, Risa B. Boerner, Suzanne K. Bogdan, Kathleen McLeod Caminiti, Laurel K. Cornell, Myra K. Creighton, Jennifer B. Carroll, Michael P. Elkon, David W. Erb, Ilanit Fischler, Jason A. Geller, Rosemary S. Gousman, Susan M. Guerette, Usama Kahf, David R. Kresser, Emily N. Litzinger, Todd B. Logsdon, Todd A. Lyon, Jennifer Mendez, Richard R. Meneghello, Richard A. Millisor, Stephen C. Mitchell, Joshua D. Nadreau, Raymond W. Perez, Cheryl Pinarchick, John M. Polson, Todd B. Scherwin, Evan Shenkman, Adam F. Sloustcher, Kristin L. Smith, Shanon R. Stevenson, J. Hagood Tighe, A. Kevin Troutman, Travis Vance, Sheila M. Abron, Megan C. Winter, Colette F. Wolf, Robert Yonowitz

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NEWS

05/23/22

### Regional Managing Partner of Firm's Philadelphia Office Recognized Among the 2022 Pennsylvania Power 100

Christopher P. Stief

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INSIGHTS

03/15/22

### FP Forecast: March 2022 Edition

Steven M. Bernstein, Risa B. Boerner, David W. Erb, Rosemary S. Gousman, Michael R. Greco, Todd A. Lyon, Robert Yonowitz

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NEWS

02/28/22

### Law360 Features Philadelphia Growth, Recent Of Counsel Hire

Jason K. Roberts

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### *Recent Experience*

#### Representative Work

- Assisted a credit union in compliance with numerous state laws as a result of its hiring of remote employees during the pandemic.

- Guided national financial services entities on the recruiting of numerous high production teams and individual financial professionals with assets under management ranging from \$250 million to over \$5 billion
- Obtained dismissal of a benefits lawsuit by a former employee based upon the terms of the benefit plan where former employee claimed benefits based upon information mistakenly provided.
- Obtained dismissal of discrimination, whistleblower and other employment claims based upon arbitration agreements.
- Assisted multiple financial industry employers with crafting and rolling out enterprise-wide restrictive covenant agreements, including tailoring by geography and employee duties in order to maximize enforceability and ease of use in future litigation.
- Successfully defended numerous FINRA arbitrations for clients ranging from national broker-dealers to banks and credit unions using a third-party investment service provider brought by financial advisors seeking multi-million-dollar awards for U-5 defamation and/or wrongful termination.
- Guided bank board in the successful negotiation of exit of bank president threatening legal action.
- Obtained summary judgment of claims by bank and broker-dealer employees claiming age, race, and other forms of discrimination.
- Successfully defended national broker-dealers and multi-million-dollar financial services teams in extensive non-compete/trade secret litigation resulting in denials of TROs and Preliminary Injunctions and arbitrations resulting in a zero-dollar damage award.
- Served as expert consultant on raiding liability and raiding damages in FINRA arbitration where private banking client won \$9 million award.
- Guided a national financial services client through obligations under the Older Worker Benefits Protection Act and state and federal WARN obligations relating to reduction-in-force.
- Advised a financial services organization concerning its rights and obligations with respect to pre-employment inquiries under state and local fair chance laws.
- Prosecuted and defended matters on behalf of multiple national broker-dealers with respect to motions for TROs and Preliminary Injunctions involving non-solicitation agreements, and trade secrets issues.
- Created template contracts and extensive related documentation for book of business transition / retirement program for national broker-dealer; retirement / book purchase and transition teaming agreements for regional broker-dealer; networking contracts and related documents for national RIA; promissory notes and bonus contracts for recruiting program for regional bank and book of business sale and purchase agreement and related agreements for independent financial services company.

- Obtained multiple millions of dollars in awards in broker-dealer advisor transition disputes, including compensatory and punitive damages along with attorneys' fee awards.
- Obtained \$10,000 a day sanction on behalf of private banking client for FINRA member's failure to comply with third-party discovery.

## ***Key Contacts***

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See all →