

Global HR Hot Topic

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Global Employee Handbooks



Most every major American employer has issued an employee handbook explaining to its US staff how its US workplace works. It has been said that “[a] well written, lawful [US domestic] employee handbook has no downsides; it provides...all the flexibility necessary to address innumerable possibilities when it comes to employee actions and inactions.” (J.B. Sandburg, “Creating a Great Employee Handbook,” <http://www.cues.org> (1/14))

In the United States, employee “handbooks”—which these days increasingly exist electronically on an organization’s intranet—summarize employees’ day-to-day terms and conditions of employment and benefits offerings. Staff handbooks cover topics as varied as “onboarding,” disciplinary rules, hours/work time/overtime, pay period, paid time off (absences, sickness policy, vacations, holidays), leave, benefits/health care/insurance, safety and security, dress code, smoking policy, expense reimbursement, access to employee emails/Internet, confidentiality, social networking and social media, coworker dating, antinepotism in hiring, “bounties” for recruiting new employees, discounts at local merchants, dispute resolution and many other subjects. In addition, all well-drafted American handbooks include a conspicuous “employment-at-will disclaimer” explaining that the document does not constitute an employment contract and reserving the employer’s right unilaterally to change or revoke the handbook, or any provision in it, at any time.

With employee handbooks so vital stateside, a US-headquartered employer venturing out abroad often assumes that staff handbooks play as important a role overseas. In fact, in addition to the domestic US business case for employee handbooks, employers setting out overseas often find *additional* reasons to issue handbooks abroad—after all, international handbooks might help align an organization’s far-flung HR operations across borders, and handbooks overseas might serve as a sort of cross-jurisdictional inventory of employee benefits, practices, rules and offerings, helping headquarters understand its own foreign workplaces.

This logic makes intuitive sense, perhaps. But it is usually wrong. In most (if not all) jurisdictions outside the United States, the home-grown local employers that know the local market best tend *not* to issue staff handbooks. While not exactly unique to the United States, employee handbooks tend to be rare in most overseas markets, except among the local outposts of American-based organizations. Why do overseas local employers tend to avoid employee handbooks in overseas markets? Perhaps American-based multinationals might want to avoid barging into a foreign market issuing a handbook in that jurisdiction, if the local employers are getting by just fine without handbooks. Perhaps *not* issuing a handbook might be advantageous in these markets. Indeed, in some countries issuing a detailed American-style handbook might raise significant legal risks.

Each monthly issue of *Global HR Hot Topic* focuses on a specific challenge to globalizing HR and offers state-of-the-art ideas for ensuring best practices in international HR management and compliance. White & Case’s International Labor and Employment Law practice helps multinationals globalize business operations, monitor employment law compliance across borders, and resolve international labor and employment issues.

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Yet, without employee handbooks, American employers can feel naked. American headquarters can feel constrained from communicating to their own staff their basic workplace benefits, practices, rules and offerings. A multinational contemplating an international handbook—be it a single global staff handbook or a series of aligned foreign-local handbooks—therefore needs an international handbook *strategy*. Its handbook strategy should account for four issues: employment-at-will; the myth of the single global employee handbook; aligning local-jurisdiction handbooks; and alternatives to employee handbooks outside the United States. We discuss these four issues here.

1. Employment-at-will

US employment-at-will is unique in the world and contrasts sharply with the more regulated “indefinite employment” regimes that reign across the rest of the world. This difference happens to be central to the strategic questions that swirl around the core issue of whether an international organization should issue employee handbooks internationally.

Employment-at-will leaves unregulated many basic aspects of the employment relationship that, abroad, fall under local statutes. Many aspects of human resources—for example, holidays, vacation, sick leave and other leaves, capped hours, bonuses, certain benefits, notice before employment termination and severance pay—tend to be regulated in most countries, but not in the United States. An employer is usually wise to avoid complicating the legal compliance analysis by including a separate discussion of statutorily regulated topics in a local employee handbook.

Also, employers overseas usually give their staff detailed written employment contracts that guarantee specific terms and conditions of employment including pay rate, benefits, bonus scheme, office location and work schedule. (See our [Global HR Hot Topic of Jan. 2014](#)) An employer that addresses these same topics in its employment contracts risks complicating the contractual analysis if it includes a separate discussion of contractual topics in a local employee handbook.

Domestically within the employment-at-will US, with so many HR topics both *unregulated and uncontracted-for*, individual employers end up applying divergent practices that vary from one employer to the next. While certain best practices cluster by industry, employer offerings differ widely both across and even within industries. For example, a US bank, insurance company or professional services firm might offer at least some of its full-time employees bonuses, sick leave, maternity leave, paid vacations, paid holidays and severance pay. But a US restaurant, retailer or hotel might not offer any of these even to full-time staff. And so a newly hired US worker starts his new job wondering about his new employer’s HR offerings, benefits, practices and rules.

American employers almost always give their staffs detailed employee handbooks both to communicate how management addresses workaday topics and to streamline “onboarding” and orientation (insulating the company HR team from lots of repetitive questions).

Outside the United States, this plays out very differently. Overseas, local employment laws plus local work contracts—individual employment agreements, “statements of employment particulars,” works council agreements, collective “enterprise level” trade union agreements and collective “sectoral”/industry-wide union agreements—tend to dictate lots of the very same terms and conditions of employment that an American boss would typically cover in an employee handbook. Outside the United States, in theory, a new hire arrives at a new job already understanding the organization’s basic offerings, either because those offerings are dictated by statute or because those offerings are spelled out in individual and collective employment contracts. For an employer abroad to issue a detailed employee handbook in one of these jurisdictions could be redundant, or, at least, the handbook would play only a modest and marginal role as a communication piece.

■ **Exceptions.** While detailed American-style employee handbooks are indeed rare among local domestic employers across much of the world, there are exceptions—jurisdictions where staff handbooks are common and helpful tools. For example, handbooks are fairly common in a handful of Asian and common law jurisdictions including Ontario and other Canadian provinces with conditions somewhat similar to the United States. Staff handbooks exist in England, although they are less common there than stateside. In China, American companies think employee handbooks help them comply with the 2008 Labor Contract Law; after “the promulgation of the [2008] PRC Labor Contract Law, the China entities of many multinational companies began to adopt their own employment handbooks. Also known as ‘staff handbooks’ or ‘employment guides,’ in...PRC Labor Law...[these] are referred to using the Chinese terms *gui zhang zhi du*.” (Y. Wang & K. Moore, “Producing an Effective Employment Handbook in China,” 4/09) That said, Chinese law does not mandate handbooks, and many Chinese employers do not issue them.

Another problem with issuing employee handbooks overseas also connected to employment-at-will is the conundrum of the *employment-at-will disclaimer*. We mentioned that every well-drafted American handbook includes a prominent employment-at-will disclaimer that reserves management’s right to change or revoke handbook clauses at any time, even without employee consent. Employment-at-will disclaimers say the handbook is not a binding contract. But employment-at-will disclaimers, while vital clauses in US handbooks, can be worthless abroad because they tend to be unenforceable: “In other countries [outside the United States], regardless of disclaimer, [employee] handbooks may be

viewed as binding contracts.” (S.J. Hirschfeld, “Global Employee Handbooks Must Balance Compliance and Culture,” SHRM Online, 11/18/13) Overseas, even a handbook with a clause purporting to be an employment-at-will disclaimer can lock management into most every benefit, practice, rule and offering discussed in the handbook, in theory forever.

- **Example.** As an example of the rigidity of employee handbooks where employment-at-will disclaimers are unenforceable, consider the common handbook *holiday clause*. Countries outside the United States tend to require that even nongovernment employers grant listed national holidays as paid days off. Korea used to grant “Constitution Day” as one of its official listed holidays, but at one point Korea delisted that day. At that point local domestic Korean employers simply stopped granting Constitution Day as a paid day off work. But the Seoul branches of American organizations that had issued Korea employee handbooks with a “Company Holidays” provision had painted themselves into a corner: They found themselves stuck with a quasi-contractual obligation to grant Constitution Day off *because their own (now outdated) Korea employee handbooks granted a vested right to that holiday*. Management could not easily remove that right without employee consent, even after Korea took Constitution Day off its list of official holidays.

Sticking employment-at-will clauses into foreign employee handbooks can have other adverse effects. In *Oliver v. Sure Grip Controls* (Sup. Ct. British Columbia, 2014 BCSC 321 (2/28/14)), a Canadian court recently held an American-based employer’s employment-at-will clause in its Canadian handbook rendered unenforceable the handbook’s cap on severance pay. The court opinion (¶ 48) says: “I cannot conclude the plaintiff’s [severance] damages should be limited to those based in the Handbook. The Handbook...made it clear that the Handbook ‘is not a contract of employment....’”

2. The myth of the single global handbook

Even in the face of these challenges to employee handbooks abroad, many emerging American multinationals insist they really *do* need to issue staff handbooks overseas. But an organization that insists on giving its overseas staff an employee handbook faces a threshold question: Can *one single* global handbook ever apply across far-flung workforces worldwide, without local amendments or riders? Or is a *series* of aligned but locally tailored handbooks—one per jurisdiction (local handbooks or local addenda/riders to a master handbook)—inherently necessary?

The answer is simple: the latter. As distinct from a global code of conduct, there is no such thing as a single global American-style employee handbook (without local riders or addenda) dictating detailed terms and conditions of employment across far-flung

jurisdictions, because a quintessential employee handbook addresses so many quotidian topics that necessarily differ across jurisdictions. Consider again our example of *holidays*. American staff handbooks usually delineate company holidays, but holidays are inherently local: The Fourth of July is a day off only in the United States, the Fourteenth of July (Bastille Day) is a day off only in France, and the Fifth of May (Cinco de Mayo) is a holiday only in Mexico. A single global handbook’s “Company Holidays” provision cannot possibly apply to staff across various jurisdictions unless it lists every holiday everywhere. Inevitably management needs to tailor a handbook holiday clause for each country. And beyond holidays, this need to tailor local clauses applies to every other inherently local handbook topic, be it vacation, office hours, lunch period, overtime, pay period, benefits, bonuses, expense reimbursement procedures, site-specific security procedures, deals with local merchants, sick leave and other leaves, smoking policy, dress code and the like.

3. Aligning local-jurisdiction handbooks

The impossibility of a single detailed American-style global employee handbook (without local amendments or riders) leaves management with just one option if it wants to issue employee handbooks across borders: *aligned local handbooks*, one per country (or else the functional equivalent of a single global handbook plus a local rider/addendum per country). This aligned local handbook approach can indeed work, but it can be complex. First, draft a single core template for all the local handbooks (or for the handbook riders/addenda), leaving blanks—places to address each specific term/condition of employment that needs to be covered locally, like holidays, vacation, office hours, lunch period, overtime, pay period, benefits, bonuses, expense reimbursement procedures, sick leave and other leaves, deals with local merchants, site-specific security procedures, smoking policy, dress code and the like. Next, involve overseas in-house HR to tailor local versions of that template for each respective jurisdiction, filling in the blanks in the template. Finally, back at headquarters, edit the local handbooks so that each one makes sense and aligns with the others, section by section.

Unfortunately, crafting aligned local handbooks using this approach is not easy because this approach raises several challenges:

- **Tension outside employment-at-will.** In indefinite employment jurisdictions outside US employment-at-will, issuing local handbooks raises all the challenges we already discussed: Staff handbooks are less necessary as communication tools; handbooks can conflict with local law and local employment agreements; and handbooks drastically restrict employer flexibility where employment-at-will disclaimers are unenforceable and vested rights apply.

- **Sloppy alignment.** We mentioned that step #1 when globally aligning employee handbooks is drafting a single international template (or a core handbook plus a template rider/addendum) and step #2 is asking overseas local HR to craft local-country versions of that template. But the tough work begins at step #3—*editing for alignment*. Even if local handbook drafts (or riders/addenda) come back in good shape from English-speaking countries where the organization has large employee populations and top-notch HR professionals, drafts of local handbooks or riders that come back from smaller, more thinly staffed, non-English-speaking foreign offices inevitably need editing work. Some of these local drafts will have too much detail while others will have too little. And the local drafts will often be riddled with errors and inconsistencies, requiring back-and-forth and follow-up questions. With US-style handbooks so uncommon in many jurisdictions, local HR staff that creates the local drafts may misconstrue the assignment, misunderstand the global template, or passive-aggressively resist the global handbook project entirely. First drafts of local employee handbooks (or riders) are especially likely to need significant editing and follow-up where the original headquarters template was too loose or included tricky topics that require finesse abroad (for example, nepotism, coworker dating, discrimination protected groups, bullying and harassment, diversity, conflicts of interests, smoking/alcohol/drugs, social networking, business gifts, dress code, processing employee data, internal investigations, employer right to check emails, whistleblower hotline). Inevitably, someone at headquarters on the global handbook project team ends up with the thankless task of fixing each local draft handbook one section at a time, or else the organization risks issuing sloppy and unaligned local documents.
- **Launch logistics.** Once the texts of local employee handbooks (or local riders/addenda) are finally ready to go, the time comes to launch each local handbook (or rider) in its respective overseas workplace. In the employment-at-will United States this step is simple: A non-union American employer simply communicates the latest version of its handbook to its staff, declares the old version repealed, and maybe instructs everyone to sign a handbook acknowledgement. But outside the United States, launching a handbook is never so simple. Additional and often complex *launch steps* are necessary, including: consultation/negotiation with local employee representatives; filings with government agencies; alignment with existing local work rules and employment agreements; and mandatory translations. Further, collecting signed employee handbook acknowledgements overseas is much tougher than stateside, because overseas employees are free to refuse to sign. For example, a court in China once reinstated an employee fired for refusing to sign a handbook acknowledgement after his employer had failed to consult with worker representatives over a new handbook. (*Hou* case, Beijing Intermediate Peoples' Court No. 4, 11/26/09) Take a country-by-country approach to handbook launch logistics. (See our [Global HR Hot Topic of Feb. 2012](#))

- **Updates.** A related challenge here is *employee handbook updates*. American employers update their domestic American employee handbooks whenever laws or conditions change. Local laws and collective agreements change everywhere, of course, so any multinational that issues a global network of local handbooks (or local riders/addenda) takes on a big responsibility to update all its local handbooks going forward—where updating is even possible, in the face of local vested/acquired rights restrictions. (See our [Global HR Hot Topic of Dec. 2013](#)) Obviously, updating a *network* of locally aligned employee handbooks multiplies the update challenge by the number of jurisdictions in play.

4. Alternatives to handbooks overseas

Even in the face of all these challenges, some multinationals have indeed successfully issued comprehensive and aligned local employee handbooks across their offices and facilities worldwide. But because of the complications we discussed, these multinationals are the exceptions; the hurdles to issuing detailed American-style employee handbooks across far-flung jurisdictions do impede lots of multinationals from issuing aligned foreign handbooks. What do multinationals constrained from issuing foreign handbooks do instead? Some multinationals confine detailed employee handbooks only to those jurisdictions where handbooks are welcome locally—the United States, China, Ontario and certain other jurisdictions. But how does a multinational that gives up on the idea of issuing a worldwide employee handbook or series of handbooks fill the void? Without foreign handbooks, how can a multinational inventory and communicate to staff its internal benefits, practices, rules and other offerings?

Fortunately, there are indeed several viable substitutes for staff handbooks abroad. Which particular substitute is most viable for a given organization depends on the specific reasons why that employer is contemplating a global handbook (or series of handbooks) in the first place. Here are five viable alternatives or substitutes for global employee handbooks:

- Global “welcome booklet.”** While a detailed global employee handbook may be too granular to extend across a number of far-flung jurisdictions simultaneously, any multinational can issue a global “welcome booklet” that tells its new hires, worldwide, about big-picture topics like the organization’s history, culture, values and goals. Welcome booklets are easy, uncontroversial and unregulated.
- Global code of conduct.** We have seen that US-style employee handbooks are tough to globalize because they tend to address *inherently local* topics. But a different cluster of topics—topics relating to corporate conduct and ethics—is *inherently global*. These conduct/ethics topics lend themselves readily to a single in-house cross-

jurisdictional guidebook. Indeed, probably every major American multinational has already issued a cross-border code of conduct (or code of ethics) addressing inherently global topics like antitrust, environmental protection, data protection, intellectual property, confidentiality, insider trading, discrimination/harassment, Sarbanes-Oxley, bribery/improper payments/Foreign Corrupt Practices Act, company work rules, conflicts of interests, compliance, investigations and the organization's whistleblower hotline. Of course, launching a global conduct or ethics code raises its own separate set of challenges. (See our [Global HR Hot Topic of Mar. 2012](#)) But done right, global codes of conduct are vital tools that support international legal compliance.

iii. Aligned individual employment agreements. In the United States, relatively few rank-and-file employees have detailed written individual employment agreements. But outside the United States, employers often give even rank-and-file workers ironclad guarantees under written work contracts and "statements of employment particulars." Indeed, some countries affirmatively mandate written employment contracts, by law. (See our [Global HR Hot Topic of Jan. 2014](#))

Overseas, these employment contracts and "statements" usually address many of the same topics that American management includes in employee handbooks. But in format, employment contracts vary from one country to the next. The cross-jurisdictional differences among employment contracts can be so frustrating that some multinationals work to *align* their individual work contracts internationally. These internationally thinking organizations begin these cross-border employment-contract-alignment projects by crafting a single global employment agreement template. Then they spin that template off into a local employment contract form for each relevant jurisdiction. This exercise can serve many of the same purposes as a global handbook project, while remaining sensitive to local differences. Sometimes aligned global employment contracts can actually be more effective than aligned local employee handbooks.

iv. Global HR practices audit. Some multinationals embark on global employee handbook projects when headquarters HR suspects it knows too little about the organization's own overseas employee benefits, practices, rules and other offerings. But whenever the chief driver behind an international employee handbook project turns out to be educating headquarters, an *employee-facing* handbook is the wrong tool for the job.

More appropriate would be an internal *global HR practices audit*. (See our [Global HR Hot Topic of Oct. 2010](#)) To do a global HR practices audit, first distribute to overseas HR an "HR practices questionnaire." Then, from the completed questionnaires collected, draft aligned memoranda that inventory each local workplace's particular HR offerings. Contain distribution of these audit memos to HR managers—unlike an employee handbook, internal HR practices audit memos are not "employee-facing" documents for all-hands distribution.

v. Global employer handbook. A few innovative American multinationals have pioneered the concept of a global *employer* handbook—an internal employment practices manifesto addressed to HR staff worldwide that explains the organization's core values and its basic HR offerings. Headquarters produces and distributes the document in an effort to coach overseas local human resources leaders how to align their local HR offerings within the organization's preferred global model, while leaving enough flexibility for local HR to adapt headquarters' principles to local realities within each given workplace. Sometimes an *employer* handbook might better meet a multinational's needs than an employee-facing cross-border staff handbook.

As a multinational's business and HR practices coalesce across our ever-more-global economy, headquarters becomes more and more likely to align its HR offerings across borders, wherever alignment advances business objectives. But emerging multinationals can be too quick to jump to the conclusion that a global employee handbook (or set of aligned foreign local staff handbooks) must be the best tool for aligning HR across borders. Fundamental differences between the United States and overseas employment environments may make tools other than handbooks more effective at aligning HR offerings across national borders. Propagating international staff handbooks sometimes does make sense, but it should never be an end in itself. Global HR alignment is the ultimate goal.