

# Global Employment Handbooks: 1 Size Does Not Fit All



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Law360, New York (June 30, 2016, 11:21 AM ET) -- As U.S. multinationals focus on tightening internal compliance and labor costs, they are increasingly looking at potential savings to be gained through revamping various global employment practices and policies. The "global employment handbook" is one such opportunity, and because it is a communication piece as well, handbooks offer the employee relations benefit of providing a platform for companies to articulate their unique values, vision and mission to their global workforce.

With that said, a truly one-size-fits-all, single, global handbook is a bit of a unicorn, but there are ways to accomplish the same result while being compliant with local laws. It should be mentioned that a handbook generally is — and should be — maintained separate from a code of conduct and business ethics given the inherently local nature of provisions contained in local handbooks.

Employment handbooks carefully tailored for compliance with the local laws of multiple jurisdictions can be one of the cornerstones of a robust workplace compliance program. As a threshold matter, however, it is imperative to appreciate that labor and employment laws are inherently local and require specialized expertise. Rolling out a U.S. employment handbook abroad can create more problems than it solves by inadvertently extending U.S.-only protections and rights to employees in other countries, while also failing to address the local obligations and rights of non-U.S. employees. For example, extending Title VII protected categories to employees employed outside of the U.S. can unintentionally create protections that would not otherwise exist under local law or may mean missing other protected categories under local law (e.g., part-time status in the EU).

Also, because there is no "at-will" employment outside of the U.S., and thus terms and conditions of employment are governed by contract and/or statute (and often collective bargaining agreements) depending on the jurisdiction, a handbook in the U.S. sense may not be appropriate. Further, in order to be fully compliant, and thus enforceable, handbooks outside of the U.S. must be implemented in accordance with local laws and requirements. For example, Germany requires particular policies posted in the workplace, and in India, employees must receive written notice of 21 days prior to implementing the handbook. Finally, in many countries (such as in Belgium and France), the handbook must be provided

to employees in local language. Simply put, employment handbooks are not one size fits all.

In addition to fulfilling important compliance programs, handbooks also have the potential to do much more. Investing in handbooks for a global workforce pays dividends in several respects:

- Communicating the core business mission and workplace responsibilities — global handbooks communicate the company's mission statement and core objectives around the world, helping employees perform better and in line with the company's expectations. Handbooks are a vehicle to lay out clearly the company's goals and mission so employees feel a sense of purpose and duty.
- Promoting company culture — global handbooks spread the company's values and are a building block of the company's culture, helping employees feel engaged and a part of something bigger. Depending on the nature of the workforce and the business, using a more conversational and creative handbook can help attract and retain top talent.
- Affording legal protections — global handbooks can protect the company by providing information about standards of conduct, disciplinary processes and reporting mechanisms, and can serve as a defense in the future if necessary. (Notwithstanding, employers should however be cautious about binding themselves to certain practices or processes outlined in handbooks. Once the company represents that it will observe particular procedures or processes, there may be risks in failing to adhere to those procedures or processes.)
- Educating human resource professionals — global handbooks serve an important education function by instructing local managers and human resource professionals regarding local legal requirements like how to manage leaves of absence or vacation requirements. Thoughtfully crafted global handbooks are an effective tool for managers and save time for a company's human resources team.

Multinationals may choose from several different approaches for the preparation of their global handbooks. The most appropriate approach will depend on a number of factors, including the company's global footprint and headcount (and planning), the status of its existing handbooks, policies and practices, the type of workforce and their access to and practice of utilizing online resources, among others, and the company's overall handbook philosophy.

Broadly speaking, there are three main approaches to consider:

### **1. A Single Global Handbook with Links to Local Policies**

Under this approach, the company adopts one "global" handbook that provides a single, broad framework for its various country-specific policies. The devil is in the details with this approach.

Here, as an essential first step, the company must ensure it has an appropriate and updated U.S. handbook to serve as its foundation. (Note that an out-of-date handbook is more of a liability than an asset so it is important to regularly update the company's policies and procedures.) Next, the company "globalizes" the handbook by removing or replacing U.S.-centric provisions and policies with policies that are drafted at the highest common denominator to be workable in all relevant countries. This is crucial to avoid offering U.S.-only protections and rights to employees in other countries unnecessarily, while also failing to accommodate local obligations and rights of non-U.S. employees.

With a solid globalized handbook in place, the company then prepares local addenda that can be added as links to the global handbook. The local addenda — which would include U.S. federal and state specific addenda as well as for each country in which the company has employees — should ideally contain mandatory and strongly recommended policies for each jurisdiction. The benefit of this approach is consistency throughout the handbook and the local addenda, as well as the optics of a single employee communication across the company. The downside is that the company is making all of its country-specific policies accessible to its entire workforce, which can create confusion and may not be ideal from an employee relations perspective.

### **2. Jurisdiction-Specific Handbooks**

Alternatively, the company can prepare country-specific (and, potentially state- or province-specific) handbooks based on its U.S. handbook if consistency is desired, or through a collection of local best practices handbooks if a lack of uniformity in appearance is acceptable. Here, the key details concerning local requirements are contained within each jurisdiction-specific handbook. The advantages of this approach include full compliance with local regulations and best practices, while maintaining the core principles of the U.S. handbook where the U.S. handbook is utilized as a base document. However, in many countries outside the U.S., employers may be surprised to find that most of the U.S. handbook itself cannot be maintained, leaving only the opening and closing notes and general framework.

### **3. Jurisdiction-Specific Policies (Only)**

If the company is less concerned with maintaining an overall consistent look and feel globally, then the third alternative is to skip the creation of a global or U.S. handbook and focus only on drafting policies that are mandatory or strongly recommended in each jurisdiction. The upside of this approach is that the company can simply roll out policies individually in each country without spending too much time ensuring that the policies have

the same "look and feel" across jurisdictions. Also, this approach is appropriate if the company's global footprint is based in countries that do not recommend handbooks (like Germany) or in countries that only require work rules once certain minimum thresholds are met (e.g., Taiwan once the local Taiwan entity engages 30 employees or more; Japan once the local entity engages 10 employees or more).

Implementation is critical to success.

No matter the approach adopted, the exercise does not end at the creation of the global policy (or policies). The company should invest in understanding implementation requirements and limitations in each applicable jurisdiction. Lack of proper rollout and implementation can negate the company's ability to rely on the policy and, for instance, discipline an employee for failure to comply.

Specific implementation considerations may include:

- Translation requirements (e.g., France, Belgium and Russia);
- Notice, consultation and/or filing requirements with employees or employee bodies (e.g., notice to employees in India, works council consultations in France, and filings with local labor authorities in Japan);
- Employee acknowledgement and consent requirements.

Thus, while a unicorn, "one-size-fits-all" global handbook is a fantasy, working with experienced counsel with a global footprint can help ease the burden of planning, preparing and implementing global employment handbooks.

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