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Going Global? Effectively Take Your HR Policies Outside the U.S.

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With the current focus on U.S. multinational operations around the world and the pressure to meet globally acceptable and locally effective compliance, companies regularly turn to global employment policies as a tool to manage their local employment-related risks. Often the desire is to house these policies in a single "global" employment handbook. As efficient as it may seem to have a single employment handbook, a truly one-size-fits-all single, global handbook most often is not a realistic option. This paper discusses the potential problem with a single "global" handbook and outlines three approaches to get U.S. multinationals to the same result while fully complying with local laws.

One Global Handbook -- Why Not?

While there are some common denominators among employment laws around the world, it's the important differences in each country's laws that negate the ability to have a single employment policy that fully and effectively addresses every nuance of local laws, employer obligations and employee protections. Given this, U.S. multinationals are often overwhelmed by the complexity involved in drafting, socializing and implementing employment policies around the world, and default to rolling out a U.S. employment handbook. Unfortunately, in certain situations, that 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, the concept of at-will employment is a key lynchpin to employment law in the U.S. Because terms and conditions of employment are often governed by contract and/or statute (and often by collective bargaining agreements) in other countries, a U.S.-centric at-will employment handbook is not only unenforceable but can create false understandings within the organization around the ability to make changes to terms and conditions of employment and potentially lead to liability for the company.

Another basic tenant of U.S. employment law is discrimination protection. However, extending protection under Title VII of the Civil Rights Act of 1964 to non-U.S. employees employed outside of the U.S. may unintentionally create protections that would not otherwise exist under local law or may result in missing other protected categories under local law (e.g., part-time status in the European Union is protected). In some cases, local law may actually require discrimination. For example, when carrying out a reduction in force in many countries, employers often need to consider employees' national origins, ages, military status, and disabilities.

A current hot topic increasingly utilized in employee handbooks and policies are background checks. On one end of the spectrum is the U.S.-style criminal history check that typically involves engaging a third-party reporting agency to conduct the background check and to ensure compliance with applicable notice and consent requirements. These comprehensive background checks typically include criminal history information collected from a range of sources (e.g., local and state police, correctional agencies, country enforcement, federal resources, specialty agencies and global databases) and are subject to federal, state, and local laws that prevent discrimination on the basis of criminal history and laws that regulate the use and disclosure of such information. By contrast, in many jurisdictions (e.g., Germany, Malaysia, and Switzerland) accessing a national database of criminal history information is not an option because there is no national system for collecting and maintaining criminal history information, or the information cannot be accessed by private companies due to data privacy and human rights laws and constitutional privacy protections. Finally, in certain jurisdictions (e.g., France), checks into an applicant's criminal background history are either prohibited by law, or not possible as a matter of practice.

How to Have a "Global" Handbook While Maintaining Local Law Compliance

So, how can a U.S. multinational reap the benefits of a "global" handbook, while maintaining maximum effectiveness and enforceability? There is a way! 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 its access to and practice of utilizing online resources, and the company's overall handbook philosophy. Broadly speaking, there are three main approaches to consider that we outline below.

Jurisdiction-Specific Handbooks

The traditional approach is to prepare country-specific (and, potentially state- or province-specific) handbooks. These can be 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. For companies with large employee headcount in jurisdictions, this is often the best approach.

Jurisdiction-Specific Policies (Only)

If the company is less concerned with maintaining an overall consistent look and feel globally, then focusing only on drafting policies that are mandatory or strongly recommended in each jurisdiction is the way to go. 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). For companies expanding into jurisdictions for the first time with smaller footprints, this may be the most efficient way to comply with key policies without "breaking the bank."

A Single Global Handbook with Links to Local Policies

Although the first two approaches are recommended for many companies, increasingly U.S. multinationals want a "one stop shop" when it comes to global employment policies. In that case, a single, global handbook that also supports a framework for various country-specific policies is the most efficient approach and ensures the greatest amount of drafting consistency. The "devil is in the details" with this approach, however.

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 handbook is "globalized" by removing or replacing U.S.-centric provisions and policies with policies that are drafted at the highest common denominator to be broadly workable in all relevant countries, and often includes phrases like "to the extent permitted by applicable law."

This leaves a question as to what the law actually is and how a local court will interpret the law to be, so the next aspect of this approach is key. With a solid globalized handbook in place, the next step is to prepare local addenda that can be added as links to the global handbook. The local addenda — which would include specific addenda for U.S. federal and state as well as for each country in which the company has employees — should ideally contain mandatory and strongly recommended policies specific to 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 has the potential to create confusion and may not be ideal from an employee-relations perspective.

The Final Step -- Effective Implementation

Implementation is critical to success. Whereas employers in the U.S. can effectively implement a handbook by disseminating it and obtaining employee acknowledgements of receipt of the handbook, outside of the U.S. it is not that easy. For example, in India, employees must receive written notice of 21 days prior to implementing the handbook. In many countries (such as in Belgium and France), the handbook must be provided to employees in local language. Some countries require adoption by the local board, notification, or consultation with works councils (e.g., Germany) or employee representative bodies (e.g., the democratic process in China), filings with labor authorities (e.g., for internal regulations in France, for work rules in Japan), proper distribution (electronic or hardcopy) to employees, and collection of acknowledgements or consents. If a policy is not rolled out according to local requirements, the employer ends up with the worst of both worlds, that is, the policy is invalid such that the company cannot rely on it when enforcing the terms of the policy, but the employee may be able to enforce obligations in the policies against the employer!

So, no matter the approach adopted, the exercise does not end at the creation of the global policy (or policies). Specific implementation considerations may include:

- Translation requirements;
- 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); and
- Employee acknowledgement and consent requirements.

Conclusion

Employee handbooks can be a highly effective vehicle for U.S. multinationals to utilize in order to meet compliance requirements, address important company philosophies and culture, and impart a sense of cohesiveness across the organization. As with any employee-facing document, however, it is important that U.S. multinationals find the right "fit" for their company. The U.S. multinational employer's decision to adopt jurisdiction-specific handbooks, limited local policies, or a single global handbook with jurisdiction-specific policies will depend on the jurisdictions where it will be implemented and the employer's in-country presence, values and risk tolerance for deviation from local law. Engaging the company's relevant stakeholders as well as experienced international counsel is key to the planning and implementation of a successful global employee handbook.

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