

SEPTEMBER 2017

# How to Craft an Employee Handbook Outside the United States

*or Whether to Issue One at All*

By Donald C. Dowling, Jr.



**Littler**<sup>®</sup>

Most all major U.S. employers, and many smaller ones, have issued and periodically update employee handbooks—staff guides explaining how the organization’s particular workplace works. U.S. human resources experts almost unanimously recommend handbooks as tools for both running human resources and complying with the law. For example, one team of advisors to the real estate industry issued a 2017 instructional video titled: “Employee Handbook: Vital to Your Company’s Success.”<sup>1</sup> Separately, an advisor to the financial services industry once proclaimed: “A well written, lawful employee handbook has no downsides; it provides...all the flexibility necessary to address innumerable possibilities when it comes to employee actions and inactions.”<sup>2</sup>

- ***What an employee handbook is.*** A typical U.S. employee handbook—which these days tends not to exist in hardcopy, but rather as a file on the employer’s intranet—summarizes a wide range of terms and conditions of employment, staking out the employer’s case as to compliance with employment laws. U.S. handbooks tend to cover topics as varied as: “onboarding” (new hires joining payroll and HR programs); disciplinary rules; discrimination/harassment; diversity and affinity groups; hours/work time/overtime; pay period and payroll procedures; lunch period and breaks; time off (absences, sickness policy, vacations, holidays, leave); benefits, including medical and other insurance and the retirement plan; safety and accident reporting; facility security and passkeys; uniforms/dress code/grooming standards; smoking policy; expense reimbursement procedures; access to employee emails/internet; confidentiality and intellectual property safeguards; social networking and social media; conflicts of interest including coworker dating and anti-nepotism; “bounties” for recruiting new employees; discounts at local merchants; return-of-documents and employer property upon separation; non-retaliation and whistleblower hotline; grievances and dispute resolution—and other subjects.

U.S. handbooks often include a conspicuous “employment-at-will disclaimer” explaining that the document does not constitute an employment contract and reserving the employer’s unilateral right to change or revoke the handbook, or any provision in it, at any time.

A U.S. employer might feel vulnerable without a single document (the handbook) that sets out the organization’s basic benefits, practices, rules and offerings—and might feel vulnerable without the potential protection handbook provisions offer in buttressing the employer’s legal position (for example, mandatory reporting rules that require staff come forward as soon as a claimed incident, pattern or practice of harassment occurs).

When a U.S. organization ventures out abroad, it may assume that employee handbooks must play an equally vital role overseas. Indeed, a U.S. employer expanding overseas may figure that, in addition to its usual reasons for issuing a handbook stateside, there is an even stronger business case for issuing handbooks abroad, because:

- A single global staff handbook (or a series of aligned local-country handbooks) might help harmonize or unite a multinational’s far-flung HR operations across borders.
- A foreign employee handbook tailored for a particular overseas facility might serve as an inventory of HR practices at that location, offering U.S. headquarters a listing of the prevailing terms and conditions of employment at the offshore site.
- Handbooks overseas are immune from the unique U.S. labor law “protected concerted activity” challenges that bedevil U.S. handbook drafting.<sup>3</sup>

---

1 RRD News Funnel, <http://www.thenewsfunnel.com/video/employee-handbook-vital-your-companys-success>.

2 Jennifer Sandburg, “Creating a Great Employee Handbook,” [Cues online](#) (1/14).

3 Cf. [NLRB General Counsel Memorandum GC 15-04](#) (3/18/15).

This logic seems to make intuitive sense, but *it may be wrong*. In most (albeit not all) overseas markets, U.S.-style employee handbooks tend to be rare. In most (again, not all) jurisdictions outside the United States, locally based employers—the employers that best understand their own home markets—tend not to issue staff handbooks at all, particularly not comprehensive U.S.-style handbooks. In fact, in many jurisdictions the employers that issue handbooks tend to be only the in-country outposts of U.S.-headquartered organizations. This difference in the prevalence of employee handbooks, U.S. versus abroad, raises the questions: *Are employee handbooks a useful HR tool that happens to have developed in the United States, and that might prove equally or even more viable when exported abroad? Or do local overseas employers avoid staff handbooks because they understand something about their home markets that might not be obvious to a multinational's U.S. headquarters?*

There is no simple answer. In practice, promulgating a U.S.-style employee handbook internationally (be it a single global handbook, aligned local handbooks one per jurisdiction, or a master global handbook plus local riders/addenda) can be a viable international HR strategy for some, but by no means all, multinational employers. Any multinational contemplating overseas employee handbooks needs an *international employee handbook strategy*. In developing that strategy, account for four issues: employee handbooks outside U.S. employment-at-will; the myth of the single global employee handbook; aligning local-jurisdiction employee handbooks; and alternatives to employee handbooks outside the United States. We discuss these four issues here.

## Employee Handbooks Outside U.S. Employment-At-Will

U.S. employment-at-will is unique, a sharp contrast to the heavily-regulated “indefinite employment” regimes across the rest of the world. As the distinguishing feature of U.S. employment law, employment-at-will lies at the center of the strategic analysis around whether to issue a U.S.-style employee handbook outside the United States. Three features of employment-at-will relate to whether employee handbooks make sense outside the United States: workplace regulation, written employment contracts, and disclaimers.

### *Workplace Regulation*

U.S. labor/employment law has gotten much more robust and complex over the decades, so American lawyers and HR professionals do not characterize the U.S. workplace as lightly regulated. But looking *geographically* rather than historically, workplace regulations under U.S. employment-at-will remain notably sparse (in European parlance, “flexible”). The core concept of employment-at-will is that employers and workers are supposed to be free to agree on whatever terms and conditions of employment they want, subject only to statutes imposing minimum worker protections. By contrast, the “indefinite employment” regimes across the rest of the world actively impose strict rules on employers, on the theory that workers are inherently “subordinate,” in an inferior bargaining position and needing broad, paternalistic governmental protections. Specifically, in contrast to fairly comprehensive workplace regulations abroad, U.S. employment law tends *not* to:

- impose mandatory paid holidays, vacation, sick leave, long-service leave or other leaves
- cap hours worked
- force employers to pay year-end bonuses, profit-sharing or other compensation or benefits (beyond wages) directly to staff
- require employers set up in-house worker bargaining/consultation groups
- prohibit non-discriminatory workplace harassment and bullying
- require employers give notice before dismissal or pay severance pay (except in Montana<sup>4</sup>)

4 Montana Code Annotated § 39-2-903(5). “Montana is notable as the only state in the nation that requires just cause for employers to terminate employees.” Donna Ballman, “States with Pro-Employment Laws.” Lexis/Nexis Legal Newsroom 9/10/2014.

Yes, some federal laws impose minimal requirements in some of these areas, like unpaid FMLA leave and WARN notices. And yes, some U.S. states and municipalities have started to impose sick leave and other “progressive” employer mandates. Even so, the law of the workplace worldwide, in both rich and poor countries, regulates core employment terms far more intrusively than U.S. employment-at-will. As one example, according to the *New York Times*, “workers in Sweden are offered a smorgasbord of free health care, subsidized housing, paid leave, unemployment benefits, job training and pensions.”<sup>5</sup> The difference in the depth of workplace regulation between the United States and the rest of the world affects an employer’s strategy of whether to promulgate a robust employee handbook.

In the United States, under comparatively light workplace regulation, different employers and different industries tend to stake out very different approaches to their HR policies and offerings, leaving a new hire in the dark as to what a new boss does and does not require and provide. Someone “onboarding” at a new job in the United States walks in the door teeming with questions about this particular employer’s policies and offerings: *What is the paid-time-off policy as to vacation and personal days? How does accrual and roll-over work—and is there a use-it-or-lose-it feature? Are company holidays paid—and which ones do we get? (What about the day after Thanksgiving?) If assigned to work on a company holiday, do we get extra pay? Is there any paid sick leave or maternity leave, and if so, how much? What benefits, bonus and supplemental retirement plan are available? What is the health plan?* Employee handbooks emerged in the United States as a tool to answer questions like these in a consistent way.

In other countries, by contrast, HR policies and offerings on topics like these tend to be more uniform because local employers tend to comply with minimum labor code requirements without “topping up.” For example, workers in France tend to get only the minimum holiday and vacation benefit the French labor code requires (five weeks’ paid vacation plus eleven “statutory” holidays) while workers in Mexico tend to get only the bonuses the Mexican labor code requires (*agüinaldo* and profit sharing). A new hire “onboarding” at a job in France or Mexico walks in with few questions about the particular employer’s vacation policies and bonus offerings. A robust employee handbook feels unnecessary.

In countries with extensive workplace regulation, a U.S.-style employee handbook might actually be *detrimental*, to the extent it complicates legal compliance. Any non-privileged, reader-friendly, employee-facing document that discusses, summarizes or paraphrases provisions in a statutory code inevitably raises the risk that someone in some context might argue that a shortcoming in the employer-drafted discussion/summary/paraphrase evidences intent to break the law. This is why U.S. employee handbooks rarely detail eligibility for overtime: U.S. handbook-drafting teams appreciate that they cannot precisely abridge the complex provisions of (and ever-developing case law under) the Fair Labor Standards Act delineating which classes of worker are “exempt.”

In short, a U.S.-style employee handbook may be unnecessary—and in some contexts even problematic—in jurisdictions that robustly regulate topics in the handbook.

### ***Written Employment Contracts***

U.S. employers like to stay flexible, so they tend to avoid binding themselves to comprehensive employment contracts with staff (apart from certain executive and technical roles), preferring to use mere “offer letters” that claim not to be contracts or else preferring targeted one-way employee contracts meant only to help the employer, like restrictive covenants, intellectual property assignments and employee waivers.

By contrast, employers outside employment-at-will usually are well-advised—and in many countries are compelled by law—to give their staff detailed individual employment contracts or “statements of employment particulars” guaranteeing a range of specific terms and conditions of employment like pay rate, benefits, time off, bonus, office location, work schedule and dismissal notice. Employment law outside employment-at-will tends to impose on employers the burden

---

5 Zach Maher, “What Swedes Give up for ‘Free’ Money,” *New York Times*, August 15, 2017 at A 13.

to *disprove* employee claims about the employment relationship, so a thorough employment contract or statement-of-particulars can be a lifesaver for a hapless overseas employer when an employee alleges false promises. But an overseas employer that promulgates a comprehensive employee handbook covering topics already contracted for (or already spelled out in “statements of particulars”) complicates the contractual analysis and risks a breach, unless the overlapping provisions in the handbook and contract align perfectly. And of course if these provisions *do* align perfectly, that leaves the handbook (or at least its overlapping provisions) unnecessary.

Further, employers outside the United States are often subject to *collective labor contracts* (with unions, works councils, staff committees and other worker bodies) that guarantee specific terms and conditions of employment—overseas, “sectoral” union contracts reach even employers that never signed on. Any employer that promulgates an employee handbook covering topics also addressed in collective labor contracts or “works agreements” risks complicating labor relationships and breaching labor agreements, unless the overlapping handbook and labor contract provisions align perfectly. And again, if these provisions *do* align perfectly then the handbook or its overlapping provisions are unnecessary.

In short, a staff handbook is a breach of contract if it contradicts—and is superfluous if it mimics—provisions in written employment contracts, individual or collective.

### **Disclaimers**

Another feature of employment-at-will relevant to whether to issue an employee handbook is the *employment-at-will disclaimer*. We mentioned that most U.S. handbooks include a prominent disclaimer asserting that the handbook is “not a contract” and does not promise future employment, and expressly reserving management’s right to change or revoke handbook clauses at any time, even without employee consent. But as the name implies, “employment-at-will disclaimers” only work under employment-at-will. Sticking these clauses into handbooks outside the United States (as U.S.-headquartered employers too often do) is pointless. The clause is unenforceable under “vested rights” concepts outside employment-at-will: “[I]n other countries, regardless of disclaimer language, [employee] handbooks may be viewed as binding contracts.”<sup>6</sup> Overseas, even a handbook with a prominent 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 and the impotence of employment-at-will disclaimers outside employment-at-will, consider handbook *holiday clauses*. Outside the United States, countries require that even nongovernment employers grant official national holidays as paid days off work. Korea used to include Korean Constitution Day, July 17, among its official holidays—but in 2008 downgraded this particular day from a public holiday to a mere “commemoration day.” Immediately, local domestic Korean employers required staff to report for work every July 17. But the Korea facilities of U.S. organizations that had issued Korea employee handbooks with a “Company Holidays” provision faced a real problem, bound to their own quasi-contractual obligation to grant Constitution Day off work with pay. The unenforceability of employment-at-will handbook disclaimers prevented management from unilaterally amending Korea handbooks to remove Constitution Day, even though Korea’s own government had delisted that day.

Not only are employment-at-will disclaimers largely unenforceable outside employment-at-will, but these disclaimers can have other adverse effects outside the United States. One adverse effect is that overseas, these disclaimers are bad HR: Employees abroad see employment-at-will as an unfriendly foreign (American) concept. Abroad, a purported reservation of employer rights under employment-at-will inevitably looks harsh and culturally insensitive. Another adverse effect is that outside the United States, an employment-at-will disclaimer can nullify handbook provisions the *employer* wants to enforce. In *Oliver v. Sure Grip Controls*,<sup>7</sup> a Canadian court held a U.S.-based employer’s employment-at-will disclaimer in its own Canadian handbook rendered unenforceable

6 S.J. Hirschfeld, “[Global Employee Handbooks Must Balance Compliance and Culture](#),” SHRM Online, 11/18/13.

7 Sup. Ct. British Columbia, 2014 BCSC 321 (2/28/14), available at <https://www.canlii.org/en/bc/bcsc/doc/2014/2014bcsc321/2014bcsc321.html?resultIndex=1>.

a notice/severance pay clause in the handbook that the employer sought to impose on a departing employee. The court opinion 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...’”<sup>8</sup>

In short, the unenforceability of employment-at-will disclaimers abroad makes issuing an employee handbook overseas substantially more risky than under U.S. employment-at-will.

### **Exceptions**

Having discussed three characteristics of employment-at-will that often make staff handbooks less viable overseas, we now need to address the exceptions—the scenarios in which an American-style handbook might be well-advised outside the United States. Our general observations about handbooks posing high hurdles outside the United States broadly hold true, but some exceptional jurisdictions facilitate or even mandate employee handbooks of one sort or another. For example, employee handbooks can be found in local domestic workplaces in some common-law jurisdictions like (Anglo) Canada and England. In China, American companies and other multinationals think employee handbooks help them comply with the 2008 Labor Contract Law; Chinese lawyers have said: “[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*.”<sup>9</sup> That said, contrary to claims otherwise, Chinese law does not mandate handbooks, and many Chinese employers do not issue them.

China aside, some exceptional jurisdictions actually do mandate handbooks or the equivalent. Romanian law forces employers to issue “internal regulations” setting out workplace policies on nine statutorily-listed topics—safety, non-discrimination, non-harassment, dispute resolution, work rules, job evaluation and a few others. But even in jurisdictions like Romania that impose what we might call “handbook mandates,” all the disadvantages and risks we discussed to issuing a robust employee handbook come into play (although Romanian law, at least, offers employers substantial flexibility to update and amend their internal regulations, holding these documents to be “non-contractual”). Employment lawyers in Romania sometimes advise a minimal compliance approach: Just issue an anodyne, terse set of “internal regulations” briefly addressing only the required topics.

- **Mandatory work rules.** France, Japan, Korea and some other jurisdictions require employers issue lists of disciplinary rules. But employee handbooks as Americans understand them go far beyond merely listing disciplinary infractions. For our purposes, laws that require employers issue simple listings of their “work rules” (sometimes called “internal regulations”) do not count as employee handbook mandates.

## **The Myth of the Single Global Employee Handbook**

While employee handbooks overseas can be a bad strategy, some multinationals sometimes find a business case for international handbooks. An organization may see its domestic American handbook as so vital that it insists on spinning off international versions. Or external factors may push a multinational to export handbooks. For example, USAID-funded non-profits often point to certain (perhaps ill-conceived) USAID regulations that seem to require grant recipients to issue overseas handbooks. And in some industries, customer-imposed *sourcing protocols and supplier codes of conduct* nudge supplier companies to issue overseas handbooks to demonstrate compliance with customer sourcing requirements.

Any multinational that decides to plow ahead and issue an American-style employee handbook internationally, notwithstanding the challenges we discussed, first confronts a two-part question: *Can we simply issue one single global employee handbook to apply across our operations worldwide—or must we issue a series of aligned but locally tailored handbooks, one per jurisdiction (or a master global handbook plus a local rider/addendum per jurisdiction)?*

<sup>8</sup> Id. at ¶ 48.

<sup>9</sup> [Y. Wang & K. Moore, “Producing an Effective Employment Handbook in China,” 4/09.](#)

The answer to this question is straightforward: A single global handbook is impossible. Defining “employee handbook” as we have been using that term—a comprehensive employee-facing document spelling out terms and conditions of employment, work rules and benefits/compensation offerings—we can say unequivocally that there is no such thing as a viable single global employee handbook.

- **Example.** Consider again the example of holidays. Most every comprehensive American employee handbook addresses company holidays. But holidays are inherently local, and therefore are wildly inappropriate for an employee-facing cross-border articulation. The Fifth of May (*Cinco de Mayo*) is a holiday only for Mexicans, the Fourth of July (Independence Day) is a holiday only for Americans, the Fourteenth of July (Bastille Day) is a holiday only for the French, and we already said that the Seventeenth of July (Constitution Day), once a holiday only for Koreans, since 2008 has been a uniquely-Korean “commemoration day.”

Beyond holidays, this logic applies to every other inherently local handbook topic, be it vacation, office hours, lunch period and breaks, overtime, pay period, benefits, bonuses, expense reimbursement procedures, site-specific security procedures, deals with local merchants, sick leave, maternity and other leaves, smoking policy, dress code and the rest. These quintessential employee handbook topics are too inherently local to be susceptible to a global approach.

In short, a single global U.S.-style handbook (without local riders or addenda) is simply impossible. Employee handbooks address too many quotidian topics that differ across jurisdictions.

## Aligning Local-Jurisdiction Employee Handbooks

Accepting that a single global U.S.-style employee handbook is impossible, any multinational with a business case to issue international handbooks has only one option: aligned local handbooks, one per country (or the functional equivalent, a single master global template plus local riders/addenda). This approach can indeed work, but is complex, hard work—a three-step process:

- *First*, draft a single core template for all the local handbooks (or a master template framework for the riders/addenda). Leave blanks—places to address each specific term/condition of employment to get covered locally, like: holidays, vacation, office hours, lunch period, breaks, overtime, pay period, benefits, bonuses, expense reimbursement procedures, site-specific security procedures, deals with local merchants, sick leave, maternity leave and other leaves, smoking policy, dress code, and the like.
- *Next*, involve overseas in-house HR to tailor local versions of that template (or riders/addenda) for each respective jurisdiction, filling in the blanks in the template. Be sure overseas HR aligns the local handbook with its existing package of local HR communications, including especially local work rules.
- *Finally*, back at headquarters, edit the local handbooks (or the riders/addenda) so each one makes sense and aligns with the others, section by section.

Unfortunately, crafting these aligned local handbooks (or riders/addenda) is tough. This project raises four challenges: tension outside employment-at-will, sloppy alignment, launch logistics and updates.

### ***Tension Outside Employment-at-Will***

In indefinite employment jurisdictions outside U.S. employment-at-will, issuing local handbooks (or a master plus riders/addenda) raises the three tough challenges we already discussed: workplace regulation, written employment contracts, and disclaimers. Resolve these.

## ***Sloppy Alignment***

As mentioned, when globally aligning employee handbooks, the first step is to draft a single core template for the local handbooks and the second step is for overseas in-house HR to localize the template for each respective jurisdiction. The big job is the third step, 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 coming in from smaller, more thinly staffed, non-English-speaking foreign offices inevitably need significant work. Some of these local drafts will have too much detail, others too little. Many will be inaccurate. Expect overseas local HR staff to misconstrue the assignment, misunderstand the global template, or passive-aggressively resist the global handbook project entirely. The local drafts may require significant back-and-forth and follow-up questions. Unless headquarters does a fantastic editing job, the local handbooks will be full of shortcomings. Overseas local HR may also fail to align local work rules and other local HR policies with the new handbook.

The best way to avoid getting back local handbooks or riders/addenda that need significant editing and follow-up is to *tighten up the original headquarters template*. Avoid (or proactively manage) the tricky handbook topics that inevitably require finesse and cause friction overseas—nepotism, coworker dating, protected groups in discrimination, bullying and harassment, diversity, conflicts of interests, smoking/alcohol/drugs, social networking, business gifts, dress code, processing employee data, internal investigations, employer right to review emails, mandatory reporting rules and whistleblower hotlines.

## ***Launch Logistics***

Once the texts of local employee handbooks (or local riders/addenda) are finally ready to go, the issue becomes how to launch each local handbook or rider/addendum in its respective overseas workplace. American multinationals used to employment-at-will may not at first appreciate all the complexities here, because in America, a non-union employer simply communicates the latest version of its handbook to its staff, declares the old version repealed, and (often) instructs everyone to sign a handbook acknowledgement. Outside the United States, however, launching or updating an employee handbook is far more complex. Intricate launch steps are often necessary—consultation/negotiation with local employee representatives; filings with government agencies; alignment with existing local work rules and employment agreements; mandatory translations and other steps. Collecting signed employee handbook acknowledgements overseas is also much tougher than stateside, because overseas employees are free to refuse to sign: A court in China once actually reinstated an employee fired for refusing to sign a handbook acknowledgement when the employer had failed to consult with worker representatives over a new handbook.<sup>10</sup> Take a careful country-by-country approach to handbook launch logistics.

## ***Updates***

The final international handbook challenge is updates. In the United States, laws and conditions change, and employers routinely update their domestic U.S. employee handbooks. Of course, local laws and conditions (including collective agreements) change outside the United States, too. Any multinational with a global network of local handbooks (or a master global handbook plus local riders/addenda) bears the big responsibility to keep these documents updated going forward—to the extent updating is even possible in the face of local vested/acquired rights restrictions and the impotence of employment-at-will disclaimers (think of the Korea Constitution Day conundrum). Updating a global network of employee handbooks multiplies the update challenge by the number of jurisdictions in play.

---

<sup>10</sup> *Hou* case, Beijing Intermediate Peoples' Court No. 4, 11/26/09.



## Alternatives to Employee Handbooks Overseas

Given all the hurdles to promulgating and updating U.S.-style employee handbooks abroad, relatively few multinationals have successfully issued (and successfully maintain going forward) viable aligned local handbooks across overseas workplaces. More commonly, multinationals do without. They confine their detailed employee handbooks only to the jurisdictions where detailed handbooks are common (like the United States, Romania, China, certain provinces in Canada and some others). But this raises the question: *How does an employer that relies on a carefully crafted employee handbook in its domestic U.S. operations fill the gap, if extending U.S.-style staff handbooks into most overseas jurisdictions is disfavored?*

Fortunately there are several viable alternatives for U.S.-style employee handbooks abroad. Which alternative (or which combination) is most viable depends on the specific reasons a given multinational has for considering global handbooks in the first place. The five most-viable alternatives to U.S.-style employee handbooks overseas are: a global “welcome booklet,” a global code of conduct or ethics, aligned individual employment agreements, a global HR practices audit and a global *employer* handbook.

### ***Global “Welcome Booklet”***

We said that a single global American-style employee handbook is too granular to extend internationally. But sometimes the reason a multinational is inclined to issue a global handbook is more for the softer, culture-building features than for detailed discussions of specific rules and specific HR offerings that inherently differ across countries. In this context, a multinational can easily promulgate a single global employee “welcome booklet” or “about us” publication that explains for new hires and staff—worldwide—big-picture topics like the organization’s history, culture, values, goals and business priorities. Welcome booklets are easy, uncontroversial and unregulated, as long as they steer clear of granular HR issues that necessarily differ by location.

### ***Global Code of Conduct or Ethics***

We saw that U.S.-style employee handbooks are tough to globalize because they tend to address day-to-day, inherently local topics. But high-level HR topics—specifically those relating to business conduct and ethics—are largely global. And so matters of business conduct and ethics are particularly appropriate for a single cross-jurisdictional code.

Probably every major U.S. multinational has issued a cross-border code of conduct or code of ethics addressing business conduct and ethics topics susceptible to a cross-border approach, like: antitrust, environmental protection, data protection, intellectual property, confidentiality, insider trading, discrimination/harassment, securities law compliance, bribery/improper payments/Foreign Corrupt Practices Act, conflicts of interests, compliance approach, internal investigations and the organization’s whistleblower hotline.

Of course, drafting a global conduct or ethics code involves its own set of challenges. Many topics in these codes inevitably have local facets to them, forcing code-drafters to make certain compromises or strategic decisions. Still, a skillfully crafted global code of conduct or ethics can artfully resolve high-level issues without “getting into the weeds” of the inherently local topics more appropriate for an employee handbook.

### ***Aligned Individual Employment Agreements***

We mentioned that U.S. employers tend to avoid giving most domestic American workers detailed written individual employment agreements (preferring terse “offer letters” that purport not to be contracts or preferring specialized restrictive covenants), while in other countries employers are often well advised to embrace detailed, binding employment contracts for staff at all levels. Indeed, laws in jurisdictions from China to the European Union to Mexico and beyond actually force employers to issue, to each employee, a detailed work contract or quasi-contractual

“statement of employment particulars” addressing statutorily enumerated topics. These detailed employment agreements and statements tend to cover largely the same ground as U.S.-style employee handbooks.

But in format, individual employment contracts and statements vary widely from one country to the next. Cross-jurisdictional differences among employment contracts can be so frustrating that some multinationals actively align their individual employment contracts across borders by crafting an international global employment agreement template, and then spinning it off into aligned local employment contract forms, one per relevant jurisdiction. This employment-contract-alignment exercise ends up serving many of the same purposes as a global handbook project while remaining sensitive to local differences. The point here is that in many contexts a well-executed employment-contract-alignment project can be more effective than trying to promulgate a cross-border network of local employee handbooks.

### ***Global HR Practices Audit***

Some multinationals think they need global employee handbooks because headquarters wants a handy inventory of the organization’s own overseas HR offerings (employee benefits, holidays, workplace practices, work rules and the like). But an employee handbook is as inappropriate a tool for this particular task as a screwdriver is for hammering nails. Handbooks are *employee-facing* communications, not internal documents confined to the HR team and management.

Whenever the main driver behind a cross-border handbook project happens to be educating headquarters or HR teams about the organization’s own overseas terms and conditions of employment, find a different approach. Consider doing an *internal global HR practices audit*. First distribute to the organization’s own local overseas HR liaisons an HR practices questionnaire. Then collect the completed questionnaires and use them to draft aligned memoranda that catalog each local foreign workplace’s HR offerings on the topics headquarters wants to know about (holidays, vacation, benefits, work rules, labor representative groups—whatever). Contain distribution of the aligned audit memos to internal HR or management; again, an internal HR practices audit is not “employee-facing.”

### ***Global Employer Handbook***

As an alternative to a cross-border employee handbook, some innovative multinationals have tested the concept of a global *employer* handbook—a top-down, internal (not employee-facing) aligned-practices manifesto addressed to local HR staff worldwide, explaining the organization’s core values, its basic HR offerings and its preferred approach to common HR challenges.

- ***Example.*** Imagine a multinational beset, across its worldwide operations, by workers accumulating huge banks of rolled-over accrued vacation. Vacation accrual laws differ radically by country, so savvy headquarters will realize that no single global “use-it-or-lose-it” policy or rule in a global staff handbook could possibly work internationally. If this organization issues an *employer* handbook addressed to its internal HR teams worldwide, it could include a provision explaining headquarters’s aversion to accrued vacation, and instructing overseas HR teams worldwide to implement locally viable strategies for minimizing vacation accrual.

For certain challenges, these “employer handbooks” work a lot better than a global employee-facing staff handbook.

## Conclusion

As business and HR practices coalesce across our ever-more-global economy, multinational headquarters increasingly push to align more and more human resources policies and offerings across borders. A U.S.-headquartered multinational wrestling with global HR alignment may think it needs a single global U.S.-style staff handbook—or else it must need a set of aligned foreign-local handbooks, or a master global handbook plus aligned local foreign riders or addenda.

But maybe not. U.S.-style handbooks evolved in the unique environment of employment-at-will. Certain exceptional jurisdictions like China aside, the employee handbooks common stateside are poorly adapted to foreign environments, and may be largely unnecessary or redundant. They may even compromise compliance with employment law. Meanwhile, there are other HR tools that, abroad, can better fill the role of a U.S.-style handbook.

Promulgating international employee handbooks sometimes makes sense, but should never be an end in itself, and should never obscure a multinational's actual goal of *global HR alignment*. Before issuing any U.S.-style employee handbook outside the United States, be certain a handbook really is the best tool for the job.

