



Car policy

A main road with lots of side streets

There are around 1.1 million company cars driving around Belgium and around a third of them are lease cars. In Belgium's car fleet of nearly 5.6 million cars, that is a huge number. Nonetheless there are still a lot of companies where the policy concerning the company car – the car policy – is rather vague or even non-existent. However a clear policy is extremely important because it offers both employer and employee something to go by.

The car policy can also be defined as the rules of the game for the allocation and use of the car. And if you just think about it, that involves a whole lot: choosing the type of car, the services that are included under the lease agreement, the use of the car during working hours but also privately... the list is longer than you think. That is why it is important for a car policy to be complete, clear and up-to-date.

Normally the following items appear in a car policy:

1. Allocation of a lease car

A company car can be provided for:

- **Purely professional purposes**
The car is a work tool that is used during working hours. Evenings and weekends the car remains at the company premises.
- **For professional purposes with authorisation for private use**
The private use is regarded as part of the remuneration package and is a protected taxable benefit that you as employer cannot simply unilaterally change.



When determining the choice options for company cars, it is important to make a distinction between company cars that are allocated for performing the job (just think of representatives, technicians, etc.) and company cars that are allocated more on the basis of job classification.

When the company car is only used for performing the job and the car is therefore a work tool, it is important to think carefully about the type of car you will use for the performance of the assignments. For example, a technician is better off with a delivery van, while a sufficiently large estate is better than a saloon for a representative who is underway all day long with large products in his/her car. In addition, choice lists for this type of company car are often fixed, which makes it easier to pass the car on to a colleague if an employee leaves the company.

When company cars that are allocated on the basis of job classification are concerned, you have several options. Employees who are eligible for a company car are usually divided into categories on the basis of their job. Per category you can propose a fixed list of choices or offer your employees free choice within a lease budget determined beforehand. We advise you to mention in the car policy that you as employer always have the right to unilaterally revise the choice list or lease budget. Naturally as long as you don't negatively influence the salary benefit.

A question asked very often is how to deal with budget overrun: do you allow the employee to add extra options to the car at his/her own expense? And how is this arranged? Below we discuss two possible scenarios. When ordering the car, the employee chooses the extra options and pays them directly to the garage. It is important that the leasing company and the insurance company know about this and can include them in the insurance policy.

As employer you have little risk in this scenario if the employee leaves the company early. So the employee must be informed beforehand that in such a case, the extra options are a lost investment. A second scenario is that you pay the extra options (i.e. the increase of the monthly rent) and that you withhold the lease budget overrun monthly from the employee's pay. With this, you then do have the risk that you may no longer be able to recoup a part of the investment from the employee.

2. Use of the company car

Usually the employee is asked to manage the company car with due care and diligence. Because this concept is rather 'vague', we advise you to define this principle in detail in the car policy with a number of examples such as a monthly carwash, regular servicing, checking the oil level and tyre pressure at least once every three months, etc. Also clearly define what the limits of private use are. What is allowed and what not? Who is allowed to drive the car? Don't forget to mention that during office hours the company car may only be used by the employee. After all, it is not unusual for an employee not go to work by car, but to opt to use an alternative form of transportation, and that the partner then uses the car for their own travel to and from work.



It is possible to provide for 'penalties' in your car policy if employees do not keep to the agreements set out in said car policy. If these penalties involve an amount of money, in principle you must mention what the money collected will be used for (e.g. a good cause or the payment of the excess for an accident for which the employee is found liable).

May you as employer demand return of the car when your employee is ill for an extended period of time or decides to take up fulltime time credit?

When it concerns a company car that is only used for professional purposes (and the car therefore serves as job tool), the answer is simple: if the employment contract is not implemented, then it may be not used by the employee. It's more complicated if the employee is also allowed to use the car privately; private use is then a pay component.

In the event of an extended period of sickness, in the first month the employee is entitled to guaranteed pay and therefore also to retaining the private use of the vehicle. After the first month, the employee usually becomes dependent on the health insurance fund and the private use also ceases to apply as wage component. In other words, you can ask the employee to return the car (temporarily).

If an employee decides to take up a fulltime time credit, as employer you can ask for the car to be returned. After all, in the period of fulltime time credit the employee is not entitled to pay, therefore also not to the private use of the car as pay component.

3. Termination of the right of use

Early departure of employee

When the employer provides a company car, he assumes that the employee will drive until the end of the lease agreement. Yet it regularly happens that an employee leaves the company early, because he/she resigns or because the employer terminates the employment contract. In both cases the employer ends up with a surplus company car, which in most cases cannot be handed back to the leasing company free of charge.

May you recover the costs for early termination of the lease agreement from the employee if the latter resigns? Or can you demand that the employee acquires the car? Although case law is not clear about this, there is the risk that such a lease provision shall be considered null and void. The lease provision 'complicates' so to speak the employee's right of termination through additional financial burden and this is in conflict with the act on employment contracts (more specifically Art 6 regarding the employee's right of termination). It also occurs that the employer decides to terminate the employment contract with an employee. If you have an employee leave early, you pay termination compensation to the employee. Keep in mind that the value of the use of the company car (and fuel card) are also part of the termination compensation (€ 250 for small cars up to € 600 for large cars).



Handing in the company car

How do you deal with wear and tear at the handing in of the car? Make clear agreement about this in your car policy with clear descriptions of what comes under acceptable wear and tear, but especially what does not.

4. Employee's liability

Once again, we have to make a distinction between liability in the case of professional and/or in the case private use.

Civil liability (accidents)

If private use is concerned, the rules are clear: full liability lies with the employee. So the employee is liable for all damage/loss to the car and damage/loss/injury to third parties. The excess or deductible is therefore always borne by the employee. If in this case the employer were to pay the deductible/excess, this can be regarded as a pay component on which social security (RSZ) and taxes must be paid.

However it's difficult with professional use. Only in a case of 'fraud, serious error or repeated minor mistakes' (legal description) can the employee be held liable.

Examples of serious errors:

- Ignoring traffic lights
- dangerous overtaking manoeuvre
- going across the solid white line
- causing an accident whilst under the influence of alcohol

Criminal liability (fines)

As employer, you expect that your employees will respect the law and as such you can state in your car policy that fines shall always be borne by the employee. About private use, there is no doubt: the employee pays the fine. Yet discussions can arise when the traffic violations occurred during the performance of the employment contract.



5. Changing your car policy

Changes/amendments to a car policy are delicate, because they are very close to the line of the Act on Employment Contracts. If a company car may also be used privately, the car is a pay component. This means that every unilateral **fundamental** change to the car policy can have far-reaching consequences if the employee were to contest this before the court. So always obtain good advice when considering having the car policy be part of the employment contract or just include this as addendum to the work rules.

The legal perspective

As employer, it is important to know that the private use of a company car is a pay component and therefore subject to the law on the protection of remuneration [*wet op de loonbescherming*] (Article 18). This means that you cannot unilaterally change/amend or abolish this benefit.

Sanctions: in the work rules

You can stipulate a whole lot of things in a car policy, but if you don't mention what the sanctions or consequences are by non-compliance, they remain a dead letter. For example, if it is stated in the car policy that one may not smoke in the car and someone goes directly against this, you can have him/her pay for the refurbishing of the interior. It is at the employer's discretion whether or not to apply these sanctions in the case of an offence. In order to be able to invoke these sanctions, the employer must include them in the company's work rules. If not, they could appear as though there was a matter of arbitrariness in the application of sanctions.

Is a car policy a legal document?

No, not in the sense that it is a document laid down by law. By including the car policy as addendum to the employment contract or including it in the work rules, it does provide something to hold on to in the event of lack of clarity/uncertainties or in discussions.



LeasePlan Consultancy Services

An up-to-date car policy contributes to the prevention and reduction of costs. It provides clear insight for the employee as to what is allowed and what is not. In addition, an up-to-date car policy provides a smooth connection to the goals of your organisation.

Want to know more?

For detailed information and advice, get in touch with your permanent contact person at LeasePlan. We'll be happy to assist you in drawing up your car policy.