



# McGill University

## Guidance - T2200 Declaration of Conditions of Employment 2023 Taxation Year

KPMG LLP  
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## Background

This document (the “**Guidance**”) is provided in support of employees of McGill University (“**McGill**”) regarding Form T2200, *Declaration of Conditions of Employment* (“**T2200**”, or the “**Form**”) who are required to incur employment expenses while carrying out the duties of employment.

It is important to note that upon signing the Form, McGill, as an employer, does not assume any responsibility with respect to an employee’s personal income tax filing. Should an employee require further support in determining their employment expense deductibility, the employee should be recommended to seek advice from a professional tax advisor.

On February 2, 2024, the Canada Revenue Agency (“**CRA**”) released an updated version of the T2200 to contemplate employees who are only making a claim for home office expenses, whereby Question 7 to 13 of the T2200 can be skipped.

Additionally, the Quebec Minister of Finance announced that the temporary fixed-rate method of \$2 per day previously available to employees primarily working from home no longer applies as of 2023.

As such, employees located in Quebec will need to be issued Form TP-64.3-V, *General Employment Conditions* (“**TP-64.3-V**”), if they primarily work from home, in order to claim home office expenses. As the qualification criteria for the T2200 and TP-64.3-V follow the same criteria, this document will focus on the T2200 as the TP-64.3-V remains unchanged from previous years.

## Overview

The *Income Tax Act* (Canada) (the “**Act**”) requires employees wishing to deduct an amount in respect of certain employment expenses to obtain a T2200 from their employer.

The Act does not impose an obligation on the employer to issue the Form; however, the CRA expects employers to complete the Form in situations where the employees have reasonable grounds to make the related claims.

For the sake of simplicity, the Guidance herein addresses only salaried employees rather than those compensated through commissions, and those employees who are only claiming home office expenses, and as such, only Questions 1 to 6 are required to be answered.



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## Employment Conditions

In general terms, to deduct the expenses in connection with earning salary income, during the tax year, employees have to meet **all** of the following conditions:

- 1 Required under the contract of employment (hereinafter, the “**Contract**”) to pay their own expenses.
- 2 These expenses were incurred by the employees in the course of carrying out their employment duties.
- 3 Did/will not receive reimbursement for these expenses from McGill.
- 4 Obtained a completed and signed T2200 from McGill.

## Deductible Expenses

Upon an employee filing their personal tax return, the eligible types of deductible expenses can be found on Form T777, *Statement of Employment Expenses* (“**Form T777**”), which include (but are not limited to) office supplies, motor vehicle expenses, the use of cell phone, and workspace-in-the-home expenses (hereinafter, “**home-office expenses**”), etc.

Employees may be directed to the CRA’s Guide T4044, Employment Expenses (“**Guide T4044**”) for further guidance.

## Employee Responsibility

A completed and signed T2200 is required for employees to claim employment expenses; however, a signed Form does not provide the guarantee that any of those claims will be accepted upon the CRA’s review.

It is the employee’s duty to verify if the expenses are deductible and if they meet the requirements to claim those expenses.<sup>1</sup>

The onus is also imposed on the employees to keep adequate records in support of their claims. The employees may refer to Guide T4044 for further guidance.

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<sup>1</sup> <https://www.canada.ca/en/revenue-agency/news/cra-multimedia-library/businesses-video-gallery/t2200-conditions-employment-form-employers.html>.



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### Employer's Obligation

There is no statutory obligation imposed on an employer to issue a T2200; however, the CRA expects employers to complete the Form in situations where the employees have reasonable grounds to make the related claims.<sup>2</sup>

This means that McGill, as an employer, has the right to decline to issue the Form if not **reasonably certain**<sup>3</sup> an employee meets all of the employment conditions outlined above.

For example, if an employee is not required under the Contract to incur expenses related to fulfilling their employment duties, such expenses shall not be listed and certified within the Form.

### Contract

The Contract is usually in writing and may take the form of an individualized employment agreement, an employee handbook, or similar internal policies. However, it is a well-accepted position undertaken by the CRA that the requirement for an employee to pay their own expenses can be an implied term if not expressly provided in the Contract.

The CRA has stated that the requirement to pay for employment expenses may exist where there is a tacit understanding between an employee and the employer that such payment was to be made by the employee and that it was necessary under the circumstances to fulfill the employee's duties of employment.<sup>4</sup>

### Required to Pay

To be eligible for a deduction, employees must be able to prove that they are "required" under the Contract to pay their own expenses in the course of fulfilling duties of employment. The expenses must be required by the employer, not merely permitted (i.e., a choice of the employee).

The Tax Court of Canada (the "**Court**") stated that absent an express requirement in a written contract, if it is tacitly understood by the employer and employee that such payment was to be made and necessary to fulfil the duties, that would suffice.<sup>5</sup>

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<sup>2</sup> CRA Technical Interpretation 2013-0507001E5.

<sup>3</sup> CRA Technical Interpretation 2012-0437201E5.

<sup>4</sup> CRA IT-352R2, Employee's Expenses, Including Work Space in Home Expenses.

<sup>5</sup> *Tulman v. R.*, 2014 TCC 140.



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## **Common Mistakes**

As indicated by the CRA, the most common mistakes in filling out T2200 are often a matter of not supplying enough details to support an answer to a question or contradictions with the interpretation of the conditions of employment.

## **Deductible Home Office Expenses**

“Home office expenses” include workspace-in-the-home expenses (herein referred to as “workspace expenses”), office supplies and other expenses such as certain phone expenses.

The deductible workspace expenses consist of the following types of expenses related to the use of a workspace in your home:

- Electricity, cleaning costs, heat, and water
- Utilities portion (electricity, heat, and water) of your condominium fees
- Maintenance and minor repair costs
- Rent paid if your home is rented
- Home internet access fees.

Workspace expenses do not include mortgage interest, principal mortgage payments, home internet connection fees, furniture, capital expenses (replacing windows, flooring, furnace, etc.) and wall decorations.

### **Office supplies**

Employees may deduct the cost of certain office supplies you paid in 2023 if you used these supplies directly in your work while working at home and the McGill has not or will not reimburse you.

Common office supplies that are deductible include stationery items, such as pens, stamps, folders, sticky notes, postage, printer paper, toner, and ink cartridges, etc.

Office supplies do not include items such as headsets, charging or connecting cables, computer accessories, ergonomic footrest, briefcases or calculators.



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### Phone expenses

Employees can deduct the costs of long-distance phone calls as long as the costs are reasonable, and the calls were made in relation to the performance of employment duties.

Employees can deduct a part of a basic cell phone service plan if all of the following conditions are met:

- The cost of the plan is reasonable
- The minutes or data were used for employment purpose
- The cost of the plan has been divided between employment use and personal use on a reasonable basis.

### Determination of Workspace Expenses

**Step 1:** to calculate the workspace expenses, employees will firstly need to determine the percentage of your workspace used for employment purpose (herein referred as “**employment-use percentage**”) based on the following:

- The type of workspace used
- The percentage of your home used as a workspace (herein referred to as “workspace percentage”)
- The percentage of time your workspace is used for employment purpose (herein referred to as “**work-time percentage**”).

### Types of workspaces

A common area – is a space that has other purposes besides your work. If you worked in a common area at home, your claim needs to be further factored by the work-time percentage. An example of a common workspace would be use of the kitchen table which you use to conduct your employment duties and the area also is used for meal service.

A designated area – is a space you used only for work (for example, a spare room or dedicated office area). If you worked in a designated room, your claim is not affected by the number of hours you use the space for work.

### Workspace percentage

Workspace percentage is generally determined based on the square footage of the workspace in home as a percentage of the home’s total finished area square footage.



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In a household where there are multiple employees sharing workspace (either within a common area or a designated area), each employee will need to calculate their own workspace percentage within the shared workspace.

**Work-time percentage**

*General approach*

The general approach adopted by the CRA in determining the work-time percentage for a workspace maintained within a common area in home is based on the numbers of hours worked within a calendar week. For example, if you worked 8 hours for 5 days during a week, the work-time percentage is calculated as:  $(8 \text{ hours} \times 5 \text{ days}) / (24 \text{ hours} \times 7 \text{ days}) = 40/168 = 23.81\%$ .

*Alternative approach*

The introduction of an allocation methodology presents a certain amount of subjectivity to the allocated use of common area space. Tax legislation and case law suggest that any allocation method that is used must be fair and reasonable. The CRA have stated that there may be more than one allocation that is considered fair and reasonable.

Based on case law one might consider that for areas of common use that may not be used at all times during the day or night, such as the living room, you would only include the time when the space is actually used (either for a personal or work use) in the denominator of the allocation analysis. Thus, for the overnight hours where the living room is not being utilized these hours would be excluded from the calculation.

Therefore, if you were to follow this position, which differs from the CRA published policy, in the example provided above where the daily usage hours for a common area, such as the living room, were perhaps only 14 hours and the overnight hours are 10 hours, the work-time percentage could be determined as:  $(8 \text{ hours} \times 5 \text{ days}) / (14 \text{ hours} \times 7 \text{ days}) = 40/98 = 40.82\%$ .

Note that this alternative approach would not be applicable for a shared use bedroom where the space is used for personal use in the overnight hours, but it is worth considering for workspace common areas that are not used in either a personal or work capacity overnight.

The following examples in this Guidance have been prepared using this alternative approach that extracts an estimated 10-hour overnight time (representing the period in which a common area is not utilized either for a personal or work use) per 24-hour period.





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**Example 1: calculation of employment-use percentage**

Kate lives in a rented apartment. In 2023, Kate has been working 4 days a week from home, and 1 day a week from McGill's place of business as an employee, as agreed upon with her manager.

Kate set up a dedicated workspace in her living room, taking up half of the living room square, while the living room itself which accounted for 20% of the apartment's square footage, as her workspace for 8 hours during the day on days she worked from home. The living room is used as personal common space outside Kate's working hours.

**Result:** Based on the suggested allocation methodology, each of their employment-use percentage is calculated as follows:

Kate used a common area as her workspace, so her employment-use percentage is factored by both a workspace percentage and a work-time percentage, which equals:  $10\% \times (8 \text{ hours} \times 4 \text{ days}) / (14 \text{ hours} \times 7 \text{ days}) = 3.27\%$ .

**Step 2:** you will then need to gather the workspace expenses for:

- costs incurred for the entire home, and
- if applicable, maintenance costs solely incurred for a workspace.

**Step 3:** finally, the workspace expenses are calculated as:

$$A \times B + C \times D1, \text{ or } A \times B + D2$$

A = Employment-use percentage

B = Workspace expenses for the entire home

C = Work-time percentage

D1 = Maintenance costs of workspace (within a common area)

D2 = Maintenance costs of workspace (within a designated area)

**Example 2: calculation of workspace expenses**

Continued with Example 1, Kate incurred the following costs related to her workspace in home:

Rent: \$24,000



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Utility: \$3,000

Internet: \$1,200

Subtotal (with internet): \$28,200

Subtotal (without internet): \$27,000

Minor repairs to living room: \$80

**Result 1:** Based on the suggested allocation methodology, Kate's workspace expenses are calculated as follows:

Kate's workspace expenses:  $3.27\% \times \$28,200 + 10\% \times \$80 = \$930.14$ .

Note that: under the above allocation method, the employment portion of internet costs are grouped together with the other expenses incurred for the entire home and then factored by both workspace percentage and work-time percentage.

**Result 2:** As aforementioned, the method to allocate workspace expenses is not defined in the legislation. For the purpose of determining the employment portion of internet use, an alternative approach may be based on the time when the internet is being used for business purposes in relation to the time used for personal purposes.

Assuming beyond the 8 working hours, Kate spent 3 hours on the internet during the working day and 7 hours each day over the weekend, the ratio for prorating internet costs for employment use for Kate should equal:  $(8 \text{ hours} \times 4 \text{ days}) / (8 \text{ hours} \times 4 \text{ days} + 3 \text{ hours} \times 5 \text{ days} + 7 \text{ hours} \times 2 \text{ days}) = 52.46\%$ . Kate's workspace expenses are calculated as follows:

Kate's workspace expenses:  $3.27\% \times \$28,200 + 52.46\% \times \$1,200 + 10\% \times \$80 = \$1,560$

Note that: if this approach is to be taken, you need to properly track the time of internet usage to establish the reasonableness of the allocation. In addition, to the extent that you upgraded to a higher internet speed to accommodate the need of video calls for employment purpose, the cost of the upgrade from one level of service to another may be fully attributed to an employment use.



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## Frequently Asked Questions

### 1 What are the key differences between the T2200 and the T2200S?

With the CRA no longer continuing to issue the *Declaration of Conditions of Employment for Working at Home Due to COVID-19* (“T2200S”), employees that are not “required” to incur expenses related to their employment activities will not be eligible for the T2200 where they may have been eligible for the T2200S by virtue of simply working from home due to COVID-19.

Employees will no longer be able to utilize the *Statement of Employment Expenses for Working at Home Due to COVID-19* (“T777S”) to claim the “Temporary flat rate method” simply based on the number of days worked from home due to COVID-19. Instead, employees will be required to calculate their home office expenses eligible for deduction similar to the “Detailed method” in the T777S, through the *Statement of Employment Expenses* (“T777”).

As aforementioned in the guidance above, employees will only be able to claim eligible expenses that they were required to incur in the course of performing their employment duties.

### 2 What type of exposure does the employer have for putting erroneous information on a T2200? Does it matter if it is intentional or a mistake?

Employers should not be exposed to additional liability if upon signing a T2200, there is reasonable ground that an employee meets the conditions as described in T2200.

The reason is that a signed T2200 does not provide any guarantee that such claims would be accepted upon the CRA’s review since there are other conditions beyond the descriptions contained within the Form that the employee must ensure to satisfy in order to claim any employment expenses.

By signing the Form, the employer certifies that the information given on this form is, to the authorized person’s best knowledge, correct and complete. Therefore, it is not acceptable to issue the Form that contains misrepresentation attributable to neglect, carelessness and willful default. Furthermore, erroneous and unreliable Forms are invalid.

### 3 What is the difference between a “requirement” and a “choice”?

See the above discussion under the section “Required to Payment”. To be eligible for a deduction, employees must be able to prove that they are “required” (as opposed to making a voluntary economic decision by “choice”) under the Contract to pay their own expenses in the course of fulfilling duties of employment.



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**4 In the absence of a Written Contract of Employment, does a verbal or implied agreement count? With respect to Question 1 of the T2200, what if the written employment contract is silent on requirements but there is understanding that the employee has to bear costs?**

Yes, the CRA has confirmed that the requirement for an employee to pay for their own expenses can be either expressly provided for under a written contract of employment or implied.

As discussed under the “Required to Pay” section, the Court stated that absent an express requirement in a written contract, if it is tacitly understood by the employer and employee that such payment was to be made and necessary to fulfil the duties, that would suffice. In other words, an implied mutual understanding may constitute the requirement for an employee to pay their own expenses while carrying out the employment duties.

**5 Does providing an employee with an allowance imply that they are responsible for costs?**

It may result in certain perceptions that an employee is required to pay for their own expenses upon receiving an allowance from the employer. However, whether this may be sufficient to establish the evidence that the employee is required by the employer to pay for such expenses in fulfilling their employment duties is still a question of fact and shall be examined on a case-by-case basis.

**6 With respect to Question 4 of the T2200, what types of expenses should be listed here?**

Question 4 covers any employment expenses that the employee was required to pay on their own while carrying out the duties of employment and did or will receive a reimbursement from McGill.

**7 With respect to Question 5 of the T2200, what type of detail is required here to describe the expenses?**

This question denotes any required expense types for which the employee did not receive reimbursement or allowance.<sup>6</sup> It enables employers to list expenses that you require the employee to pay to perform their employment duties.

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<sup>6</sup> <https://www.canada.ca/en/revenue-agency/news/cra-multimedia-library/businesses-video-gallery/t2200-conditions-employment-form-employers.html>.



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**8 With respect to Question 5 of the T2200, what if an employee requests to put items in here that probably weren't incurred for business purposes (e.g., meals, entertainment, gas, etc.)?**

As an employer, you should be reasonably certain the employee meets the condition before completing the Form. If an employee is not required under the Contract to incur such expenses, such expenses shall not be listed and certified within the Form.

**9 With respect to Question 6 of the T2200, how exact does the percentage of the employee's duties of employment being performed at their home office need to be?**

Generally, using an approximated percentage based on an agreed upon level of days worked at the employee's home office versus McGill's place of business (e.g., 3 days working from home would be 60%) should be sufficient for the purpose of completing the Form.

It is the employee's responsibility to ensure that only the eligible amount of home-office expenses may be deducted upon filing their personal income tax returns.

**10 Is it acceptable for the T2200 to be signed electronically by the Employer?**

Yes, the CRA accepts electronic signatures for the purpose of certifying a T2200 form.



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