

An aerial, high-angle photograph of a large crowd of people standing on a paved surface marked with a grid of yellow lines. Several large, semi-transparent yellow circles are overlaid on the grid, highlighting specific areas. The people are scattered throughout the scene, some standing alone, some in small groups, and some looking towards the camera. The overall color palette is warm, dominated by yellows and oranges.

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# Workplace updates

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**DENTONS WEBINAR SERIES**  
COVID-19 - LEGAL UPDATE  
FOR CANADIAN EMPLOYERS

# Panelists



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# Vaccines and antigen testing in the workplace update

Alison Walsh, Partner, Edmonton

# Vaccination Policies

- No legislation mandating vaccinations.
- Companies implementing vaccination policies will have to balance interests of workplace health and safety with an employee's right to privacy and equal/non-discriminatory treatment
- COVID-19 vaccination policies are untested in Canadian law
- Vaccine policy guidance can be drawn from existing law:
  - Influenza vaccination policy case law
  - Random drug and alcohol policy case law

# Vaccine Policies

- Employers considering implementing vaccination policies should evaluate:
  - Is there evidence of serious health and safety risk in the workplace?
  - Is there evidence vaccinations will minimize health and safety risk?
  - Are there less intrusive methods that may be adopted to minimize health and safety risk?
  - Does the seriousness of the risk and introduction of a vaccination policy outweigh the harm to employee privacy?
  - Discrimination risks?
- Vaccination incentives
- Assess need for liability insurance in case of illness or injury related to vaccination program

# Rapid Antigen Testing

- What is rapid antigen testing?
  - Rapid point-of-care test that detects specific proteins on the surface of the virus.
- Employers must follow provincial guidelines regarding private antigen testing:
  - Alberta – Guidance for Employer-Initiated COVID-19 Testing
  - Ontario – COVID-19 Guidance: Considerations for Privately Initiated Testing
- Recommend employers seek legal advice on issues of human rights, privacy, health information and occupational health and safety before implementing a testing program.
  - Employers should develop company policy for COVID-19 testing based on legal advice.
  - Employer will likely need a compelling business or health rationale for introducing antigen testing to justify harm to employee privacy.
- Assess need for liability insurance in case of illness or injury related to vaccination program.
- Antigen testing does not replace requirement for other COVID-19 preventative measures such as symptom screening, physical distancing, masking and hygiene.

The background features a solid orange color with several overlapping circles in various shades of yellow and orange, creating a modern, abstract design.

# **Claiming Home Office Expenses**

## **Simplified Reporting Methods for the 2020 Tax Year**

Alexandra Terrell, Associate, Toronto

# Agenda

- Overview of the simplified reporting methods the Canada Revenue Agency (“CRA”) introduced due to COVID-19
  - The Temporary Flat Rate Method and Eligibility
  - The Detailed Method and Eligibility
- Overview of home office expenses employees can claim using the detailed reporting method
- Instructions for employers when filling out Form T2200S, *Declaration of Conditions of Employment for Working at Home Due to COVID-19*
- When to use the T2200S vs the T2200, *Declaration of Conditions of Employment*
- Additional resources

# Introduction

- With the increased number of employees working from home in 2020 due to COVID-19, the CRA introduced simplified reporting methods for claiming home office expenses for the 2020 tax year:
  - The Temporary Flat Rate Method
  - The Detailed Method with the supporting short form T2200—the T2200S, *Declaration of Conditions of Employment for Working at Home Due to COVID-19*
- These methods reduce the administrative burden on both employees and employers
  - For example, if employees choose to use the Temporary Flat Rate Method, their employer is not required to fill out any documentation supporting the employee's claims
- The regular reporting method using Form T2200, *Declaration of Conditions of Employment* must still be used in certain circumstances

# Simplified Reporting Methods: Temporary Flat Rate Method

- Employees can claim \$2.00 per day for each day worked from home, for up to a maximum of 200 days (for a total of \$400)
  - Includes days on which employee did not work a full day
  - Does not include sick days, vacation days, etc.
- Employees do not need to obtain Form T2200S from their employers to keep on file—the CRA will not request it
- Employees are not required to keep receipts and records of expenses claimed—the CRA will not request these
- Employees simply submit Form T777S, *Statement of Employment Expenses for Working at Home Due to COVID-19*
- Employees should keep any records that pertain to their eligibility for claiming home office expenses

## Eligibility: Temporary Flat Rate Method

- Employee worked from home in 2020 due to COVID-19
- Employee worked from home more than 50% of the time for at least four consecutive weeks
- Employee is only claiming home office expenses (no other employment expenses)
- Employer did not reimburse employee for **ALL** home office expenses
  - Some overlap is acceptable here and will not reduce the cap of \$400 using this method

# Simplified Reporting Methods: Detailed Method

- No specific cap on amount employee can claim for home office expenses
- Employees must obtain Form T2200S (or T2200 in certain circumstances) from their employer to keep on file in case the CRA requests it
- Employees must keep receipts and records of expenses claimed in case CRA requests them
- T2200S is similar to Form T2200, but T2200S used only if employee is eligible, and if employee is claiming only home office expenses
- Employees must submit Form T777S, *Statement of Employment Expenses for Working at Home Due to COVID-19*
- Employees should also keep any records pertaining to their eligibility for claiming home office expenses

## Eligibility: Detailed Method

- Employee worked from home in 2020 due to COVID-19 OR employer required employee to work from home
  - This does not have to be part of an employment contract and can be a written or verbal agreement.
- Employee was required to pay for expenses related to their workspace in the home
  - Employee is still eligible if employer reimbursed them for some expenses, however those reimbursed expenses cannot be claimed.
- One of the following applies
  - Workspace in the home is where employee mainly (more than 50% of the time) worked for a period of at least four consecutive weeks; or
  - Employee only uses their workspace in the home to earn employment income and they use it continually for meeting with clients, customers, patients, etc.
- Expenses are used directly in employee's work
- Employee has completed and signed Form T2200S or T2200 from their employer on file

# List of Eligible and Ineligible Home Office Expenses

Eligible Expenses (portion attributable to work-related use can be claimed)		Ineligible Expenses
<b>Salaried and Commission Employees</b>	<b>Commission Employees Only (these expenses limited to amount of commission)</b>	<b>Salaried and Commission Employees</b>
Utilities, including electricity, heat, and water	Home insurance	Expenses that were or will be reimbursed by your employer
Utilities portion of condominium fees	Property taxes	Mortgage interest
Rent paid for a house or apartment where you live in which the workspace is situated	Lease of a cell phone, computer, laptop, tablet, fax machine, etc. that reasonably relate to earning a commission income	Principal mortgage payments
Maintenance and minor repair costs (cleaning supplies, light bulbs, paint, etc.)		Rental value of the workspace in a home owned by the employee
Employment use of a basic cell phone service plan		Office furniture and decorations
Long distance telephone fees		Capital expenses (replacing windows, flooring, furnace, etc.)
Home internet access fees (monthly internet fees only, not the cost of leasing a modem or router)		Office equipment and accessories (printer, fax machine, briefcase, laptop case, calculator, etc.)
Office supplies (stationery items, pens, folders, toner, ink cartridges, etc.)		Computing equipment and accessories (cell phone, computer, laptop, tablet, monitor, mouse, keyboard, headset, etc.)
		Other electronics (television, smart speakers, digital assistant, etc.)
		Home internet or cell phone connection fees (one-time initiation fees)

# Filling out the T2200S

## Part B – Conditions of employment

1. Did this employee work from home due to COVID-19?  Yes  No
2. Did you or will you reimburse this employee for any of their home office expenses?  Yes  No
3. Was the amount included on this employee's T4 slip?  Yes  No

## Employer declaration

I certify that this employee worked from home in 2020 due to COVID-19, and was required to pay some or all their own home office expenses used directly in their work while carrying out their duties of employment during that period.

I certify that the information given on this form is, to the best of my knowledge, correct and complete.

**Note:** Clearly print the name and telephone number of the authorized person in case we need to call to verify information.

\_\_\_\_\_

Name of employer

\_\_\_\_\_

Name and title of authorized person

\_\_\_\_\_ ext. \_\_\_\_\_

Date

Telephone number

\_\_\_\_\_

Signature of employer or authorized person

# When to fill out the T2200S vs. the T2200



Canada Revenue  
Agency

Agence du revenu  
du Canada

Protected B when completed

## Declaration of Conditions of Employment for Working at Home Due to COVID-19

This form is only for employees who worked from their home in 2020 due to COVID-19. The **employer** must complete and sign this form if the employee chooses to use the detailed method to calculate their home office expenses (work-space-in-the-home and supplies). If the employee is required to pay for expenses other than home office expenses, do not use this form. Instead, complete Form T2200, Declaration of Conditions of Employment.

The **employee** does **not** need to attach this form to their return, but they must keep it in case the Canada Revenue Agency asks to see it later. However, employees must complete and attach Form T777S, Statement of Employment Expenses for Working at Home Due to COVID-19, to their tax return to deduct home office expenses for the year.

For more information about claiming employment expenses, see Guide T4044, Employment Expenses.

- **T2200S**
  - If employee is only claiming home office expenses; and
  - If employee worked from home in 2020 **due to** COVID-19
- **T2200**
  - If employee is claiming other employment expenses (e.g. employment use of a vehicle, meals on employment-related trips, etc.); or
  - If employee was working from home in 2020 before COVID-19

## Additional Resources

- Alexandra Terrell, “Deducting home office expenses in 2020” (26 February 2021), online: *Dentons Insights* <<https://www.dentons.com/en/insights/alerts/2021/february/26/deducting-home-office-expenses-in-2020>>.
- Canada Revenue Agency, “Frequently asked questions—Home office expenses for employees” (4 February 2021) online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-229-other-employment-expenses/work-space-home-expenses/frequently-asked-questions.html>>.
- Canada Revenue Agency, “Home office expenses for employees” (15 December 2020), online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-229-other-employment-expenses/work-space-home-expenses.html>>.

# Contemplating a return to the office

## A detailed look at work refusals

Allison Buchanan, Senior Associate, Toronto  
Larysa Workewych, Associate, Toronto

# Work Refusals in the Context of COVID-19

- Employers can generally dictate how work is performed and can generally require employees to return to work.
- Answer depends on context: What is the reason for the refusal?
  - Fear of COVID-19?
  - Childcare or other responsibilities?
  - Preference for remote working?

# Work Refusal: Health and Safety

- Right to refuse work that employee believes is unsafe to himself/herself or another worker.
- Specific procedure that must be followed under the *Occupational Health and Safety Act*.
- COVID-19 context: Ensure that applicable occupational health and safety guidelines and recommendations are followed.

# Work Refusal: Human Rights

- Work refusals based on a protected ground – age, disability, family status – should be treated in same manner as request for accommodation.
  - Duty to accommodate requires employers to be flexible and accommodate requests up to the point of undue hardship.
  - If accommodation intended to be limited to duration of COVID-19, ensure this is clearly conveyed.
- COVID-19 context: Infectious Disease Emergency Leave
  - Employee providing care or support to prescribed individuals?

# Work Refusals: Employee Preference

- No general right for the employee to dictate new terms of employment.
- What has been communicated to employee about working from home?
- Real implications on business and employee if individual found to be employed in a different jurisdiction.
  - *Zhang v IBM Canada Ltd.*, 2019 CanLII 79641 (ON LRB)

## Work Refusals: Employee Preference, cont.

*Staley v. Squirrel Systems of Canada Ltd.*, 2013 BCCA 201

- Employee moved from B.C. to Quebec.
- No written employment agreement, but court found it was a term of employment that he work in B.C.
- Employer did not condone his permanent relocation to Quebec.
- Employer had just cause to terminate employment.

# Work Refusals: Practical Tips

- Apply the return to work rule uniformly, but be open to requests for accommodation.
- Ensure that communications with employees make it clear that the ability to work from home is related to the response to COVID-19 and not a permanent entitlement.
- Give employees enough time to return to the office.
- Ultimately, once safety, human rights, and job protected leaves of absence are ruled out, be confident in requiring the employee to return to the workplace.

**Questions?**

The background is a solid orange color. It features three large, semi-transparent yellow circles of varying sizes. One circle is on the left side, another is on the right side, and a smaller one is positioned at the bottom right, overlapping the larger circle on the right.

# Thank you



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