

INFO SHEET 2

T2200 Obligations and Requirements¹

1. Employer Certification Requirements

Under the *Income Tax Act* (the "ITA"), an employer signed certification form is mandatory for members to claim a deduction for an employment expense (Form T2200).

The CRA has taken the position that a T2200 does not have to be filed with the employee's income tax return, but must be maintained by the employee in the event that the CRA requests it or if the employee is audited.

2. Obligation of Production Companies to Sign the Employer Certifications Forms

There is no specific obligation under the ITA requiring the employer to sign the T2200. Instead, this obligation should be placed on the employer by the terms of the deal memo or other written agreement. However, the CRA has stated that generally, and in the film industry in particular:

"We would expect employers to complete forms in situations where the employees have reasonable grounds to make claims."²

In at least one case, the Tax Court of Canada implied that there is a legal obligation on the employer to complete a T2200. However, in a more recent case the Tax Court found it did not have jurisdiction to compel the Minister of Revenue to apply a penalty to an employer for failing to sign the form.

While there is no clear and binding legal obligation on employers to sign the T2200, and no penalty for refusing to do so under the ITA, there is an expectation by the CRA that employers would do so where an employee has reasonable grounds to make a deduction claim for an eligible employment expense.

3. Requirement to have the Employer Certifications Signed by the Employer

Generally, a signed T2200 by the employer is mandatory for employees to claim deductions for expenses.

In some cases the Tax Court of Canada has accepted that there may be circumstances in which an employee may be allowed to deduct employment expenses without the T2200, including where the employer's refusal is unreasonable or the employer does not respond to a request by an employee for a signed T2200.

¹ For the 2020 taxation years, employees can use the simplified Form T2200S.

² CRA Views 2013-0507001E5, Obligation du remplir un T2200 pour un employé, October 27, 2014.

In the case where the employer refuses to sign the T2200:

1. Members may still be able to claim the deduction when they have legitimate eligible expense claims, particularly if the employer is not responding to the T2200 request or being unreasonable.
2. Members should complete the T2200 and retain it with their records with a note setting out the reasons why the employers or their representatives refused to sign the form.
3. Members should include the requirement to complete the T2200 in future deal memos if the applicable collective agreement does not include a T2200 obligation.

4. What Does the Employers Signature Mean

The employer's signature on a T2200 is meant to certify the completed form is an accurate representation of the terms and conditions of the employment contract for that employee.

The T2200 does not guarantee that the deductions will be accepted by CRA. The courts have found the T2200 is not conclusive or determinative, but rather provides a *prima facie* case which can be rebutted by evidence led by either the CRA or the taxpayer.

5. Consequences for Employer in Refusing to Sign or Falsely Certifying

Employers, including their representatives, such as the Production Manager and Accounting Department staff who are asked to sign the T2200, and who make a false representation on the form, could be subject to the penalty provisions under the ITA. This may include a penalty of the greater of \$100 and 50% of the amount of tax that is understated.

There have been cases where employees have been subjected to large fines and even jailed for falsifying a T2200 form, typically for forging an employer's signature and/or claiming illegitimate expenses.