

### Work for Hire chart

A work belongs to the employer or commissioning party if the work is a work made for hire. To determine if the work is a work made for hire:

<b>Step 1</b>	<b>Is the person who created the work an employee or an independent contractor?</b>	
	1) 13 Factors that indicate employee status	
	a. the hiring party's right to control the manner and means by which the product is accomplished.	More control= more like an employee
	b. the skill required;	More skill= more like independent
	c. the source of the instrumentalities and tools;	Employer tools= more like employee
	d. the location of the work;	Work at place of employer= more like employee
	e. the duration of the relationship between the parties;	Short duration= more likely independent
	f. whether the hiring party has the right to assign additional projects to the hired party;	Right to assign additional projects (w/in specific time frame)= more like employee
	g. the extent of the hired party's discretion over when and how long to work;	More discretion=more likely independent
	h. the method of payment;	
	i. the hired party's role in hiring and [*752] paying assistants;	Hiring assistants indicates independent status
	j. whether the work is part of the regular business of the hiring party;	Regular business of hiring party = more likely employee
	k. whether the hiring party is in business;	Hiring party in business= more likely employee
	l. the provision of employee benefits;	No employee benefits= more likely independent
	m. and the tax treatment of the hired party.	Taxes and unemployment paid = more likely employee
<p>No one of these factors is determinative. <b>Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730, 751-752 (U.S. 1989)</b>  <b>These factors should not merely be tallied but should be weighed according to their significance in the case. Aymes v. Bonelli, 980 F.2d 857, 861</b></p>		

<b>Step 2</b>	<b>If an Employee</b>	<b>If an Independent contractor</b>
	<p>Was the work within the scope of employment? Conduct of a servant is within the scope of employment if, but only if:</p> <ul style="list-style-type: none"> <li>(a) it is of the kind he is employed to perform;</li> <li>(b) it occurs substantially within the authorized time and space limits; [and]</li> <li>(c) it is actuated, at least in part, by a purpose to serve the master</li> </ul> <p>Miller v. CP Chems., 808 F. Supp. 1238, 1242 (D.S.C. 1992), citing RESTATEMENT (SECOND) OF AGENCY § 228 ,</p>	<p>Was the work <i>specifically ordered or commissioned</i> for one of the categories that can be given work for hire status? The 10 categories are:</p> <ul style="list-style-type: none"> <li>- a collective work</li> <li>- a motion picture or other audiovisual work</li> <li>- a translation</li> <li>- a supplementary work, a compilation</li> <li>- an instructional text</li> <li>- a test</li> <li>- answer material for a test</li> <li>- an atlas</li> </ul>
	Yes                      No	Yes                      No
<b>Step 3</b>	<b>If yes, then it is a WFH                      If no, then it is not a WFH</b>	<b>If yes, then did the parties <i>expressly</i> agree in a <i>written instrument signed</i> by them that the work shall be considered a work made for hire.                      If no, than it is not a WFH</b>
		<p style="text-align: center;">Yes                      No</p> <p style="text-align: center;"><b>It's a WFH                      It is not a WFH</b></p>
<p>©2009 Alicia Wagner Calzada. For reference purposes only. For legal advice, see a lawyer.</p>		

17 USCS §101