

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:

Step 1 Is the person who created the work an employee or an independent contractor?	
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

No one of these factors is determinative. **Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730, 751-752 (U.S. 1989)**
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

Step 2 If an Employee		If an Independent contractor	
Was the work within the scope of employment? Conduct of a servant is within the scope of employment if, but only if:		Was the work <i>specially ordered or commissioned</i> for one of the categories that can be given work for hire status? The 10 categories are:	
(a) it is of the kind he is employed to perform;		- a collective work	
(b) it occurs substantially within the authorized time and space limits; [and]		- a motion picture or other audiovisual work	
(c) it is actuated, at least in part, by a purpose to serve the master		- a translation	
Miller v. CP Chems., 808 F. Supp. 1238, 1242 (D.S.C. 1992), citing RESTATEMENT (SECOND) OF AGENCY § 228 ,		- a supplementary work, a compilation - an instructional text - a test - answer material for a test - an atlas	
		17 USCS §101	
Yes	No	Yes	No
Step 3 If yes, then it is a WFH	If no, then it is not a WFH	If yes, then did the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.	If no, than it is not a WFH
		Yes It's a WFH	No It is not a WFH
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