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. *Cnty. 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

Was the work within the scope of employment? Conduct of a servant is within the scope of employment if, but only if:

- (a) it is of the kind he is employed to perform;  
- (b) it occurs substantially within the authorized time and space limits; [and]  
- (c) it is actuated, at least in part, by a purpose to serve the master


<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tr>
<td><strong>Step 3</strong></td>
<td><strong>If yes, then it is a WFH</strong></td>
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### Step 3: If yes, then it is 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.

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<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>It's a WFH</td>
<td>It is not a WFH</td>
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