



WORK-FOR-HIRE?

Work-For Hire is one of two things. It is either a work prepared by an employee within the scope of his or her employment, in which the employee enjoys ongoing employee benefits. Or, it is a commissioned work (photography assignment) in which the photographer and client have agreed in writing that it is a “work made for hire”. In order for this agreement to be binding, it must be signed before any work is produced. According to copyright law, a Work-For-Hire agreement means the copyright no longer belongs to the photographer.

The problem with a Work-For-Hire agreement is that it strips the photographer of the copyright, without compensation commensurate with a copyright transfer.

When receiving a purchase order, a substitute W9 (1099) form, or any contract from the client, carefully inspect both the front and back to make sure that it does not include a statement agreeing to Work-For-Hire or reference acceptance of a separate document that includes such a statement. Any such reference should be crossed out, and initialized to bring it into alignment with the terms listed on the photographer’s estimate.

That said, it is important to recognize that Work-For-Hire is not inherently bad in itself. If one is being paid reasonable compensation, it can actually be quite acceptable. But the questions that are rarely answered are “how much is reasonable?” and “why”? As with all successful business transactions, it must benefit BOTH parties. Here’s how to make sure it turns out that way, and how to explain it to your client.

Consider the two alternatives a photographer might have for making a living: one, as a company employee, and the other, as a self-employed vendor.

As an employee:

The company holds all rights to the photographer’s work in exchange for a salary, including unemployment insurance, and other employee benefits; and for providing other business costs such as equipment, physical space, telephone, accounting, promotion, and all the other hats outside vendors normally wear. The company, in exchange for assuming the associated risks and providing a salary with employee benefits, profits from full ownership of the employee’s efforts as part of his/her job.

As a vendor:

The photographer owns all rights to the images, and licenses the specific uses required to the company. The photographer also benefits from any extra value or profits related to the business, including any future benefits from owning the images. This is because the photographer assumes all related costs and risks of running the business mentioned above, plus the responsibility of providing his/her own salary and employee benefits such as steady employment.

A work-for-hire agreement for the self-employed photographer is a hybrid situation, in which the photographer assumes all the costs and risks of running his/her business, and gives up (like an employee) all ownership rights of the work to the company. Since the photographer in this case is actually acting as an employee without employee benefits, both parties must agree who is responsible for providing employee benefits for the photographer. Otherwise the relationship will not be mutually beneficial, and will fail.

Therefore, the following stipulations are presented to identify who is responsible for providing benefits normally provided for employees (including a salary, unemployment insurance, and all the rest). If it’s the CLIENT, the client initials the item. If it’s the PHOTOGRAPHER, the photographer indicates what it would cost to provide it for himself, expressed as a fee. Normal production expenses and charges associated with the photography are added to these fees.

This information is the result of an effort by myself and Attorney Bill Gignilliat. It's main purpose is to:

1. Educate both ourselves and our client
2. Expose the devious intents of the work-for-hire concept and anyone (usually their lawyers) promoting it.

While the immediate goal is to communicate to our clients what work-for-hire really means (a viewpoint that will be easily understood by their lawyers), the following stipulations have a somewhat tongue-in-cheek approach. But the eleven points also illustrate the photographer's extent of SELF-RESPONSIBILITY as an independent business-person. We tend to forget these very important issues until too much water has spilled over the dam. Personally, I have come to recognize them as a great place to start setting goals for myself. And I especially like the part about the gold watch. - Tim Olive

SPECIAL STIPULATIONS FOR WORK-FOR-HIRE AGREEMENT

All of the following items, initialed by the parties to indicate who is responsible for their provision, are specifically incorporated into and included in the agreement between the parties of even date herewith and constitute a part of said agreement, to wit:

1. SALARY: The parties agree Photographer will receive an annual salary, or prorated portion thereof per agreement, determined to be in the amount of \$ _____; this includes payment of related federal and state taxes, federal social security deductions (FICA), and coverage for UNEMPLOYMENT INSURANCE, all as required by law. Client (initials): _____ [or] Photographer (fee): \$ _____
2. RAISES: The parties further agree that Photographer shall be entitled to all semi-annual, annual, or periodic raises or advances in employment as all other employees of Client. Client (initials): _____ [or] Photographer (fee): \$ _____
3. HEALTH INSURANCE: The parties agree that Photographer is covered by Client's health insurance policy or plan, and this is to acknowledge further that all application forms have been completed and that all brochures pertaining to coverage, name of company and terms and conditions of all insurance have been delivered pursuant to terms for employment and worked-for-hire provisions. Client (initials): _____ [or] Photographer (fee): \$ _____
4. SICK LEAVE: The parties agree that Photographer shall be entitled to ten (10) days of sick leave with pay per year. Client (initials): _____ [or] Photographer (fee): \$ _____
5. VACATION: The parties agree that Photographer shall be entitled to and shall receive seven (7) days of paid vacation and seven (7) days of unpaid vacation during the first year of employment and fourteen (14) days of paid vacation after completion of one year or one year from the first date of this agreement, whichever shall first occur. Client (initials): _____ [or] Photographer (fee): \$ _____
6. HOLIDAYS: The parties agree that Photographer shall be entitled to any and all state and federal holidays that the Client recognizes. Client (initials): _____ [or] Photographer (fee): \$ _____
7. PENSION AND PROFIT-SHARING PLAN: The parties agree that Photographer shall be entitled to and shall be vested in Client,s Pension and Profit-Sharing Plan and shall be entitled to all benefits therein. This is to acknowledge that Client has filed all documentation, applications and satisfied all other requirements to give notice to the Administrator of said Pension and Profit-sharing plan. Client (initials): _____ [or] Photographer (fee): \$ _____
8. KEYS AND ACCESS: The parties agree that Photographer shall receive and sign for any and all keys and security control devices necessary to admit Photographer upon the premises of Client. Photographer shall receive any key which may be necessary for rest room facilities. Client (initials): _____ [or] Photographer (fee): \$ _____
9. BONUSES AND COMMISSIONS: The parties hereby agree that Photographer shall be entitled to any and all bonuses and commissions, based upon performance or on an annual basis to which other similar employees may be entitled and payable at the same time and in the same fashion. Client (initials): _____ [or] Photographer (fee): \$ _____
10. JOB TITLE: The parties hereby agree that Photographer shall title of _____ (Staff Photographer, Executive Photographer, Editorial Photographer). Client (initials): _____ [or] Photographer (fee): \$ _____
11. RECOGNITION, ETC: The parties hereby agree that Photographer shall receive recognition,s for period of employment and longevity with Client in the same fashion as other employees, including any pins, plaques, gold watches, etc. Client (initials): _____ [or] Photographer (fee): \$ _____

Client signature	Date	Photographer signature	Date
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