

WAGENCY WORK AGREEMENT

Determining the tax classification of the assistant as an independent contractor (1099) or employee (W-2) has significant implications for each party. When filing as an independent contractor, the worker takes on greater financial risk and is subject to Self-Employment Tax. When filing as an employee, the worker may be subject to FICA (Social Security tax and Medicare) and income tax withholding. Misclassification of workers can result in fees and penalties for the employer. This work agreement has been designed to help you determine the correct classification according to IRS guidelines which can be found [here](#). All italicized language in this agreement is quoted directly from these guidelines.

1-PARTIES ENTERING AGREEMENT

EMPLOYING ARTIST	
ADDRESS	
PHONE	
EMAIL	
WAGENT NUMBER	
ARTIST ASSISTANT	
ADDRESS	
PHONE	
EMAIL	
WAGENT NUMBER	

2-JOB TITLE

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3-JOB DESCRIPTION

According to the IRS, the most important factor in determining whether someone is an independent contractor or an employee is whether the employing artist has the right to control the details of how the services are performed. *Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.*

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4-RESPONSIBILITIES

IRS note: *If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship. In addition, an employee is generally subject to the business's instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work: When and where to do the work; What tools or equipment to use; What workers to hire or to assist with the work; Where to purchase supplies and services; What work must be performed by a specified individual; What order or sequence to follow when performing the work.*

5-DURATION OF EMPLOYMENT

IRS note: *Will the relationship continue and is the work performed a key aspect of the business? If you hire a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.*

6-TRAINING

IRS note: *If the business provides the worker with training on how to do the job, this indicates that the business wants the job done in a particular way. This is strong evidence that the worker is an employee.*

OTHER

7-TOOLS & EQUIPMENT AND EXPENSE REIMBURSEMENT

PROVISION OF TOOLS & EQUIPMENT	EXPENSE REIMBURSEMENT
<p>IRS note: <i>If a worker has a significant investment in the tools and equipment used and if the worker has unreimbursed expenses, the worker has a greater opportunity to lose money (i.e., their expenses will exceed their income from the work). Having the possibility of incurring a loss indicates that the worker is an independent contractor.</i></p>	<p>IRS note: <i>Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their business.</i></p>

8-WORK SCHEDULE

9-WORKDAY BREAK SCHEDULE

10-WORK REVIEW/CHECK-IN SCHEDULE

Regular check-ins are an opportunity for both assistant and employing artist to address any concerns or needs in the workplace, acknowledge the labor and demands of the job, review and update work description, and make room for growth in the position. IRS note: *If an evaluation system measures the details of how the work is performed, then these factors would point to an employee. If the evaluation system measures just the end result, then this can point to either an independent contractor or an employee.*

11-POINT OF CONTACT FOR JOB-RELATED QUESTIONS/CONCERNS

12-PAYMENT

IRS note: *An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.*

HOURLY WAGE

SALARY

PERCENTAGE OF SALES

OTHER

ASSISTANT INVOICES EMPLOYING ARTIST:

METHOD OF PAYMENT: CASH CHECK OTHER

TIMING OF PAYMENT:

13-BENEFITS

IRS note: *Employee benefits include things like insurance, pension plans, paid vacation, sick days, and disability insurance. Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor.*

PAID VACATION

SICK DAYS

HOLIDAYS

OVERTIME

OTHER

15-WORKER CLASSIFICATION

IRS note: *Although a contract may state that the worker is an employee or an independent contractor, this is not sufficient to determine the worker's status. The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his or her own self-employment tax. How the parties work together determines whether the worker is an employee or an independent contractor.*

EMPLOYEE

INDEPENDENT CONTRACTOR

14-OWNERSHIP

Assistants that are hired as independent contractors may have a legal basis to be considered joint authors of the Employing Artists' work, a right that employees do not have. Joint authorship would be dependent upon the degree to which the Assistant can prove that their original ideas and decision-making are part of the final work. If the agreed upon classification of work for the Assistant is Independent Contractor and both parties agree that the Employing Artist will retain full ownership of the intellectual property, while working in accordance with the outlined agreement, please use this additional optional clause.

WAGENCY WORK AGREEMENT

ASSISTANT AGREES TO TRANSFER [CHOOSE ONE] OWNERSHIP COPYRIGHT LICENSE OF _____ TO EMPLOYING ARTIST UPON FINAL PAYMENT. BY MAKING THIS TRANSFER, ASSISTANT GIVES EMPLOYING ARTIST PERMISSION TO USE THE FINAL PRODUCT FOR THE FOLLOWING PURPOSES (IF APPLICABLE, PLEASE INCLUDE AN ADDITIONAL AGREEMENT TO CREDIT CONTRACTOR'S WORK):

THE TERMS IN THIS AGREEMENT HAVE BEEN READ AND AGREED TO BY:

EMPLOYING ARTIST SIGNATURE

Signed	Digital Signature	Date
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ASSISTANT SIGNATURE

Signed	Digital Signature	Date
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Please note: Where there is a dispute over classification, Common Law Rules require evidence of the degree of control and independence which fall into three categories: Behavioral, Financial, and Type of Relationship. According to the IRS, *businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another. The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.* Please see the [IRS guidelines](#) for further information.

