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Is the "Work for Hire" Agreement Valid and Enforceable?

[Kristie Prinz](#)

Q.

How binding is a "work for hire" agreement in a court of law, if the body of the work was done prior to the signing of the contract?

-- ann

A.

The fact that a "work for hire" agreement is not executed prior to the commencement of the work does not necessarily render such "work for hire" agreement unenforceable. However, a "work for hire" agreement is essentially just a contract, and if that contract is deemed unenforceable in its entirety for any reason, then the "work for hire" aspects will be deemed unenforceable as well.

So, what is a "work for hire" agreement?

Section 101 of Title 17 of the U.S. Code defines "work for hire" as follows:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. . . .

Assuming that there is an agreement in place between two parties expressly stating that a work is considered to be a "work for hire," then this agreement will govern the relationship, unless it is found to be unenforceable. Thus, the enforceability of this agreement basically comes down to a matter contract law, and whether or not there is anything about this agreement that makes it unenforceable.

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Regarding the specific issue of executing a contract at any time after the work has already begun, it happens all the time in the legal and business worlds. The fact that a contract is backdated or entered into after the work has been performed is not unusual and does not automatically render the agreement unenforceable. Notwithstanding this fact, there has to be a meeting of the minds on the terms agreed upon.

My advice is to consult with an attorney specializing in contract law in your jurisdiction. Such an attorney should be able to review the terms of the agreement and the facts surrounding the agreement and advise you as to whether or not the "work for hire" agreement is likely enforceable.

-- Kristie Prinz

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