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Legal Matters®

# U.S. cracks down on companies that call employees 'contractors'

The federal government is cracking down on businesses that call people "independent contractors" when they're really entitled to be treated as employees.

If someone is called a contractor when they're actually entitled to be treated as an employee, the person may be able to collect reimbursement for unpaid wages and many benefits they would otherwise have received.

Both the U.S. Department of Labor and the IRS are stepping up their auditing and enforcement efforts. The IRS has begun a three-year initiative to investigate thousands of employers, large and small, and nail those who are misclassifying their workers.

Many state governments are also beefing up their enforcement efforts.

If you're a worker who's considered a contractor, but you function more like an employee – or if you're an employer and there's a possibility that you've been misclassifying your workers – you should speak to an attorney.

It's not always precisely clear what the difference is between a contractor and an employee. The IRS uses a 20-part test that focuses primarily on how much control the employer has over how the work is performed and how the person gets paid.

But there are some "red flags" that suggest that a so-called contractor is really an employee. For instance, workers might be entitled to be treated as employees if:

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- They have worked for the business for a long period of time;
- They have full-time workloads for the business;
- They don't take on work for any other employer;

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## U.S. cracks down on companies that use ‘contractors’

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- They perform a core function for the business, as opposed to a secondary function that would typically be outsourced; or
- They perform essentially the same work as other people who are treated as employees.

Some employers misclassify their workers because they simply don’t understand the difference between an employee and a contractor. But others do so in order to save money – by classifying a worker as a contractor, they avoid their obligations regarding wage and overtime laws, payroll taxes, Social Security, unemployment and workers’ compensation – not to mention health and retirement benefits and time off under the Family and Medical Leave Act.

The penalties for misclassifying workers can be significant. The IRS can issue fines of up to $5,000 per worker, and state governments can impose additional penalties. Plus, misclassified workers can seek reimbursement for wages and benefits.

# Don’t assume you can’t be compensated for injuries

Only an attorney can thoroughly investigate an accident and determine if the person who appears to be at fault is entirely to blame.

When an injury occurs, many people blame themselves or assume that their injured family member was fault. This is natural…and sometimes you or a loved one really is partly at fault. But you should never assume that this means you can’t be compensated for your loss. Only an attorney can thoroughly investigate a case and determine if the person who appears to be at fault is entirely to blame.

For instance, some years ago a student in Boston died after he fell down a set of stairs at a bar. The student had been drinking heavily, and after his death his alcohol level was found to be more than twice the legal limit.

No one saw how the student fell. But you might naturally assume that the accident was his fault.

However, attorneys investigated and found that the accident might very well not have been his fault. It turned out that the stairway violated the building code. It was narrow and steep, wasn’t properly lit, and didn’t have railings. What’s more, it was hidden at the top by dark vinyl strips rather than a proper door, so it wasn’t obvious that there were stairs there at all. The student could easily have leaned against the strips and fallen.

A kitchen manager at the bar was interviewed and revealed that she had fallen down the steps herself in exactly the same way, and had seen a liquor company representative fall down them as well.

A judge determined that the bar owners hadn’t obtained a building permit for the stairs, and had avoided having them checked by a building inspector for many years.

As a result, the judge found that the bar was responsible for the student’s death, and awarded compensation to his family.

# Who’s responsible for paying a deceased relative’s debts?

The loss of a loved one is difficult to cope with, but if the loved one left debts behind, it can be even tougher. It’s important to know who is responsible – and who is *not* responsible – for the debts of a deceased person.

This is especially true because creditors and debt collectors have become very aggressive lately about contacting a deceased person’s family members and trying to get them to pay debts. In addition, many scam artists will read an obituary and then contact the deceased person’s relatives, posing as creditors so they can gather information and steal their identity.

An attorney can help you sort out what you actually owe, and can take steps to force debt collectors to stop contacting you.

In general, when a person dies, that person’s estate becomes responsible for any debts the person owed. The person’s executor or personal representative is responsible for paying those debts out of the property of the estate. So in general, no relative of a deceased person should have to pay any debts, unless that person is independently liable for them because he or she co-signed a loan or jointly assumed an obligation.

For instance, a relative might be liable to pay a mortgage or a car loan, but only if he or she co-signed the loan documents. A relative might also be liable for credit card debt, but only if the relative was a joint owner of the card. (If the relative was an “authorized user” but not a “joint owner,” then the relative wouldn’t be liable.)

As for medical bills and other debts, unless someone else signed an agreement promising to pay these, only the estate is responsible for paying them.

# Couples must obey divorce agreements – even if circumstances change

A typical divorce agreement may include a division of property, alimony, and child custody. In many cases, the alimony and custody rules can be modified at a later date if circumstances change. However, a property division usually can't be modified – even if unforeseen circumstances mean that one spouse got a much better (or worse) deal than anybody expected.

For instance, when an Alaska couple split up, they had to figure out how to divide some stock that they jointly owned in two companies. They decided that the husband would get the stock, and he'd pay his wife a total of $50,000 for it in a series of installments over time.

Eventually, the husband fell behind on the payments, and the wife sued.

The husband argued that he shouldn't have to pay the rest of the $50,000, because the companies weren't profitable, the value of the stock had declined, and his shares were no longer worth $50,000.

But the Alaska Supreme Court sided with the wife. It said the couple had both agreed on the value of the stock at the time of the divorce, and they both bore the risk that they might be wrong. It noted that the husband would have to pay the same $50,000 regardless of whether the stock turned out over time to be worthless or to be worth a fortune.

In another case in Georgia, a divorcing husband agreed that he would refinance the couple's home by a certain date in order to remove his wife from the mortgage. This was done so the wife would have an easier time securing a mortgage for a house of her own. The couple's agreement said that if the husband didn't refinance by a certain date, he's have to pay his wife a $10,000 penalty.

However, shortly afterward the bottom fell out of the real estate market, and despite his best efforts, the husband wasn't able to refinance in time. The wife demanded $10,000.

A judge initially gave the husband more time, saying the soft real estate market wasn't his fault.

But the Georgia Supreme Court overruled the judge and ordered the husband to pay the penalty. The court said the agreement meant what it said, and since there was nothing in the agreement that conditioned the $10,000 payment on the real estate market remaining strong, the husband was on the hook for the money.

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# Update your estate plan when your finances change

In the recent economic downturn, many homes lost considerable value and stock portfolios gyrated. If this is the case for you, then you should consider reviewing your estate plan.

If your will divides your estate into percentages for beneficiaries, then changes in value won't affect the proportions by which your estate is distributed. However, if you have included specific bequests in your will, then a rise or fall in your net worth could have significant consequences. For example, if your estate plan gives $50,000 to your favorite charity and the rest of your estate to your children, a reduction in the value of your estate could mean your children won't get as much as you intended.

A change in the value of your assets could also affect your estate plan if you intend to treat your children equally by giving them assets of equal value. For example, suppose a person's will gives a house worth $300,000 to a daughter and a stock portfolio worth $300,000 to a son. If the value of either the house or the portfolio increases or decreases significantly in value, the children will no longer receive equal gifts.

It's also important to update your estate plan if the overall nature of your assets has changed. For example, if you sold stock and bought real estate instead, this could affect the distributions to your heirs.

Finally, if the value of your estate has risen significantly, it's important to reassess whether you should take additional steps to reduce estate taxes.

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# Be careful buying a house with an unmarried partner

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Back in the old days, the typical homebuyer was a married couple. But today, there's a huge increase in the number of unmarried couples who are buying a home together.

It might not sound very romantic, but it's a good idea for such couples to think about what their financial obligations will be regarding the home, and what would happen if they were to split up at some point in the future.

For instance, you might want to consider signing a "cohabitation" or "domestic partner" agreement. This is a legally binding document that says who will pay what portion of the mortgage, property taxes, insurance, maintenance and other house-related expenses. It can also say what will happen to the property if you and your partner decide to go your separate ways.

Another way to protect yourself is to understand the different forms of property ownership. For instance, if you own real estate as "joint tenants," then you each own 50% of the property. You can't leave the property to someone in your will; if you die, your share of the property automatically goes to your partner.

On the other hand, if you own the property as "tenants in common," then you can have whatever percentage interest you want. One person can own 61% of the house and the other can own 39%, if that's what you want. In theory, the 39% owner could sell his or her 39% share to someone else (although it's hard to imagine someone wanting to buy 39% of a house). You can also leave your 39% share to someone other than your partner in your will. If the house is sold, your heir would be entitled to 39% of the proceeds.

You might want to sign a "tenancy in common agreement," which is similar to a cohabitation agreement. Such a document sets out who owns what percentage, clarifies the couple's financial obligations, and spells out each person's buying and selling restrictions and duties in the event of a split-up.

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