

*Law Office of*  
**Sativa Boatman-Sloan, LLC**  
 & **417 ELDER LAW**

# NEWSLETTER



January 2016

## Is Your Workforce Properly Classified? How to Avoid Penalties.

**P**roperly classifying those who do work for you is perhaps one of the most important decisions you can make as a business owner.

In an effort to save money and headaches, you may be tempted to hire someone as an independent contractor. Is your relationship with them really that of an independent contractor? It's a great alternative to an employee. After all, you aren't responsible for filing taxes or providing benefits to independent contractors.

Ironically, those who are trying to save money and headaches seem to get themselves into trouble and end up losing more money. Misclassification of your labor force as independent contractors when they are actually employees can lead to owing additional wages, benefits, taxes, and unemployment contributions for those workers. It can also create severe and costly penalties, including:

- \$50 to \$1,000 per day per worker and/or six months in jail per violation
- additional penalty of 25% of what the State has been defrauded
- failure to provide workers' compensation liability is a class A misdemeanor and also punishable with a civil penalty of three times the annual premium the employer would have paid or up to \$50,000

The seriousness is real, yet the US Department of Labor estimates 30 percent of companies nationwide misclassify their employees. (The above content was taken from the pamphlet titled *Are you OFF THE BOOKS?* provided by the Missouri Division of Employment Security and can be found at [www.labor.mo.gov/offthebooks](http://www.labor.mo.gov/offthebooks).)

Independent contractors and employees are not the same. Knowing the distinction will help you determine what your first move when hiring will be, or if you are compliant in your current hiring practices including the benefits being provided. It will also determine your liability to pay and withhold Federal Income tax, social security and Medicare taxes, and Federal unemployment tax, and workers' compensation to avoid costly legal consequences.

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The choice of a lawyer is an important decision and should not be based solely upon advertisements.

## 2016 TOP 10 WORKPLACE TRENDS

*EHS Today reports the top ten workplace trends for 2016*

10. Using Social Media to Make Employment-Related Decisions

9. Building Healthy, Diverse Workforces

8. Work–Life Balance Across Generations

7. Increased Focus on Business Agility and Flexibility in Work and Business Processes

6. Increasing Focus on Health and Wellness in the Workplace

5. Employee Engagement

4. Changing Nature of Performance Management and Development

3. Managing Virtual Teams

2. Trends in Technology Are Changing the Way Work Is Done

And the No. 1 trend this year...

1. Leveraging and Maximizing Big Data and Applying the Correct Analytics to Make Better Business Decisions

For the full article, go to: <http://ehstoday.com/training/top-10-workplace-trends-2016>

# Protecting Your Assets With Revocable Trusts

**H**ow do you avoid probate, yet put someone “in charge” of your assets upon death so they are distributed to members of your family, friends, and/or charities based on your wishes? Create a Trust!

A revocable living trust is a sound estate planning tool that can be used to determine who will get your assets when you die. Most living trusts are “revocable” because you can change them as your circumstances or wishes change. Revocable living trusts are “living” because you make them during your lifetime.

Trusts appoint one or more persons or companies to control and manage assets for the benefit of any number of people or charities. With a revocable living trust, the person or persons creating the trust are the sole beneficiaries during their lifetime and reserve the right to revoke or make changes. The person creating the trust usually chooses to also serve as their own Trustee and remain in charge while they are competent.

The most well-known advantage of a revocable trust is avoiding probate. Any assets properly held in the trust or transferred upon death to the trust will avoid probate and pass to the named beneficiaries as set out in the terms of the trust.

In addition, trusts are flexible and can contain unique distributions to beneficiaries. For example, you can hold money in a trust to be distributed

over time. Some families prefer to have their adult beneficiaries receive only a portion of their inheritance at one time and wait to receive the remaining amounts at later dates in the future.

Although a revocable trust may be considered the principal document in an estate plan, a will should accompany a revocable living trust. This type of will, referred to as a “pour over” will, names the revocable living trust as the principal beneficiary. Thus, in the event it becomes necessary to probate any assets after your death (such as in the instance where something was not properly transferred to the trust), it would ultimately go back into the trust and still be distributed to (or held for the benefit of) the beneficiaries according to the trust instructions.

Revocable living trusts are complicated legal arrangements that require considerable knowledge and expertise and must be the product of a thorough analysis of your goals and objectives, and your personal and financial circumstances.

At Law Office of Sativa Boatman-Sloan, LLC & 417 Elder Law, we can help you understand your legal options and advise you along the path to a sound estate plan. We will work with you and help you achieve peace of mind knowing your estate is protected. You may never see the results of the planning that you do for your loved ones, but your loved ones will!

## Workforce Properly Classified?

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Ultimately, rules hold that workers' status as an employee or independent contractor hinges on your right to control the worker. If your worker performs services for wages and you can control what, when, and how it will be done, then consider them an employee.

Here are some potential differences between an employee and an independent contractor:

### **An employee:**

- Performs duties dictated or controlled by others
- Is given training for work to be done
- Has a particular permanency of relationship with employer
- Is eligible for employee benefits

### **An Independent Contractor:**

- Operates under a business name
- Has his/her own employees
- Maintains a separate business checking account
- Advertises his/her business' services
- Invoices for work completed
- Has more than one client
- Has his/her own tools and sets own hours
- Keeps business records
- Is not eligible for employee benefits

Missouri uses the IRS 20 Factor Test – Independent Contractor or Employee which can be found on the Missouri Dept. of Labor website ([http://labor.mo.gov/sites/default/files/pubs\\_forms/M-INF-310-AI.pdf](http://labor.mo.gov/sites/default/files/pubs_forms/M-INF-310-AI.pdf)). This resource will help you determine the legal status of classification.

At Law Office of Sativa Boatman-Sloan, LLC & 417 Elder Law, we are here to assist business owners with the review and preparation of their agreements and setting up the proper legal structure for their businesses.

## **FITNESS IMPORTANT AT ANY AGE**

**I**t's never too late to start an exercise program. Studies continue to support that exercise at any age provides a multitude of benefits, beyond weight control.

### **Benefits Include:**

- Preventing Osteoporosis**
- Relieving Stress**
- Promoting Heart Health**
- Improving Cognitive Memory**
- Improving Metabolism**
- Lowering Blood Pressure**
- Reducing Bad Cholesterol**

According to a report from the Mayo Clinic, "Even moderate physical activity, such as walking or raking leaves, can help prevent or delay age-associated conditions such as heart disease, diabetes and high blood pressure."

As a general rule, people of all ages should engage in a combination of cardiovascular conditioning, strength training and flexibility exercises to maintain overall fitness.

An aerobic routine along with strength training and stretching has been proven to replace lost muscle. At age 40 and beyond, you may need to modify your exercise intensity and routine. Low-impact workouts generally are recommended for those 40 and above to allow them to burn a high number of calories while having a lower risk of injury. Most importantly for this age group, the focus should be on physical activity as opposed to dieting.

A good fitness routine means the ability to get on with life without being exhausted by normal daily activities.

It's important to listen to your body and avoid doing too much too soon.



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ADDRESS CORRECTION REQUESTED

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## *Make it a Year of Happiness & Prosperity*

**A**s in the words of Jim Rohn, *“Learn how to be happy with what you have while you pursue what you want.”*

Success, happiness, and prosperity are all controlled by you. Now is the time for you to begin that journey for this new upcoming year.

You are now at the beginning of a new cycle. Take some time to renew old friendships. Take some time to create some new relationships and friendships. What new information are you going to pursue this year? What are you going to get rid of in your life?

Now is the time to reflect, relax and plan for the next cycle that is coming up. Go to a quiet place and plan and set goals so you can make this your best year ever.

