

SMRCA Roving Roofer

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Michigan Issues Employer Workplace Safety Requirements for COVID-19

On October 14, 2019, the Michigan Occupational Safety and Health Administration ("MIOSHA") issued temporary emergency rules for Michigan employers in order to control, prevent, and mitigate the spread of COVID-19 (the "Emergency Rules"). With the adoption of the Emergency Rules, Michigan joins 13 other states in the nation in adopting comprehensive COVID-19 workplace safety rules for employers.

The Emergency Rules are detailed and have many new obligations for roofing contractors operating in Michigan. The exact text of the Emergency Rules can be found here: https://www.michigan.gov/documents/leo/Final_MIOSHA_Rules_705164_7.pdf. Michigan roofing contractors will need to overhaul safety protocols and employment practices to comply with these new COVID-19 workplace safety rules. For the time being, the Emergency Rules remain in effect for six months and can be extended for another six months upon a finding of certification of need by Gov. Whitmer.

For roofing contractors operating in Michigan, the Emergency Rules mandate employers to, among other things: categorize job tasks and procedures into low, medium, high, and very high exposure risks; create written COVID-19 preparedness and response plans consistent with OSHA and CDC guidance and including measures to prevent employee exposure based on their job risk categorizations; implement infection prevention measures, including prohibiting in-person work to the extent work activities can feasibly be completed remotely; screen all employees prior to entering the workplace and complying with notification procedures when there is a known positive COVID-19 case; designate one or more worksite COVID-19 safety coordinators to implement, monitor, and report on COVID-19 control strategies; provide employees with necessary personal protective equipment, including respirators, that is appropriate to the exposure risk associated to the job; comply with industry-specific guidelines set forth in Rule 9 (the Industry-Specific Requirements for the Construction Industry can be found under Rule 9(1)); and provide training to all employees on COVID-19 infection-control practices, proper use of personal protective equipment, notification of COVID-19 symptoms or positive diagnoses, and reporting unsafe working conditions.

To assist Michigan employers with implementing and complying with the Emergency Rules, MIOSHA has put together an online COVID-19 Workplace Safety Guidance, which is available here: <https://www.michigan.gov/leo/0,5863,7-336-100207---,00.html>. In addition, MIOSHA has put together a specific guidance resource for the construction industry, which is available here: https://www.michigan.gov/leo/0,5863,7-336-100207_101283---,00.html.

The first step Michigan employers must take to comply with the Emergency Rules is to make an exposure determination by categorizing job tasks and procedures based on levels of exposure risk (MIOSHA has developed four categories of exposure risk levels: Lower Exposure Risk, Medium Exposure Risk, High Exposure Risk, and Very High Exposure Risk). Based on the various exposure risk levels, employers must then develop and implement a written preparedness and response plan detailing measures to prevent exposure. The online COVID-19 Workplace Safety Guidance referenced above includes a sample preparedness and response plan for employers to use for compliance purposes.

Specifically for the construction industry, the Emergency Rules require Michigan roofing contractors to do the following:

- Create dedicated entry points at every worksite, if possible, for daily screening, or in the alternative issue stickers or other indicators to employees to show that they received a screening before entering the worksite that day;
- Identify choke points and high-risk areas where employees must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained; and
- Create protocols for minimizing personal contact upon delivery of materials to the worksite.

Since an employer's obligations under the Emergency Rules are job specific, it is important for every Michigan roofing contractor to assess the exposure risk for each job task and then implement the required plan to limit exposure and comply with the Emergency Rules. Although compliance with the Emergency Rules will be a significant new burden on Michigan roofing contractors, it is important to remember that non-compliance can result in potential citations and penalties.

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Contractual Waiver of Michigan Building Code Requirements

Can a requirement under the Michigan building code be contractually waived? Under Michigan law, any violation of the Michigan building code is considered unlawful and is punishable by fine. Furthermore, a primary purpose of the building code is to ensure public safety through adequate maintenance and construction of structures. Because of this, it is unlikely that any contractual provision permitting work in violation of the code will be considered enforceable by a court. In other words, the contractual clause would not work to absolve the contractor from being on the hook for any fines or subsequent damages stemming from the code violation.

The legal doctrine of waiver refers to a scenario in which a person or entity knowingly and voluntarily gives up some type of legal right or entitlement. Legal obligations and requirements can also be waived in some scenarios. A waiver is most commonly affected through a written contractual provision. However, waiver can occur orally, or something can be implied through a person's conduct. What is important is that the individual waiving a right does so knowingly and voluntarily. If these conditions are not met, the waiver will not be considered legitimate. The doctrine of waiver does have limits—there are certain rights and obligations that cannot be waived because doing so would be contrary to the purpose of why a legal right or obligation was created by legislature in the first place. For example, certain fundamental constitutional rights such as the right to be married or have children can never be waived.

The Michigan Building Code ("code") consists of certain provisions of the 2015 International Building Code and can be found in the Michigan Administrative Code (Rule 408). According to the code,

"It is unlawful for any person, firm, or corporation to violate a provision of the code or fail to conform with any of the requirements thereof, or erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by the code...a violator shall be assessed a fine in accordance with the act."

Thus, departures from and conflicts with the building code will be considered unlawful. In addition, Michigan law states that building code is designed to ensure adequate maintenance of buildings and structures throughout the state and to adequately protect the health, safety and welfare of the people. MCL 125.1504(3)(e) Therefore, a contractor cannot divert from adhering to the building code by creating a contractual provision that says both the customer and contractor agree to forego despite divergence from the building code.

A case out of the Massachusetts Court of Appeals highlights the underlying policy behind the prohibition against contractual waiver of building code provisions. In *Downey v. Chutehall Construction Co. Ltd.*, 88 Mass. App. Ct. 795 (2016), the roofing contractor, on the oral direction of the owner, installed a membrane roof on top of three existing layers of roofing which violated a provision of the MA building code prohibiting more than two layers of roofing. Alongside the building code requirement was a MA consumer protection law called the home improvement contractor law which states that any violation of the building code is a per se violation of the home improvement contractor law and is punishable by damages. The Massachusetts Court of Appeals had held in a prior case that contractor obligations

under the home improvement contractor law could not be orally waived by the owner. Thus, the issue before the Court was whether the homeowner effectively waived the code requirement, absolving the contractor from liability under the home improvement contractor law because there technically would have been no violation of the MA building code.

The jury found that installation of the new roofing membrane on top of three existing layers did violate the building code, but that the violation was the direct result of owner's directives to the contractor. The Appellate Court noted, though, that the home improvement contractor law provides that any such violation "shall constitute an unfair or deceptive act under the provisions of [the] chapter." It then discussed case law to the effect that waiver of a statutory requirement may be acceptable "when the waiver would not frustrate the policies of the statute." But a statutory right could not be disclaimed if the waiver would "do violence to the public policy underlying the legislative enactment." The court cited the purpose of the home improvement contractor law, to "ensure public safety, health and welfare insofar as they are affected by building construction." It then concluded by stating:

"To permit a waiver by a homeowner of his or her right to compel a contractor to comply with the contractor's obligations under the building code would permit, even encourage, contractors, and perhaps consumers, to waive provisions of the building code on an ad hoc basis, in the hope of saving money in the short-run, but endangering future homeowners, first responders, and the public in general."

The Appeals Court, noting that there are public safety consequences of failing to abide by the building code, held that the owner's oral waiver of the code requirement could not override the contractor's liability for violating the building code and thus the home improvement contractor law. The case was sent back down to the trial court for the owner's damages to be determined.

In conclusion, contractors should be cognizant of contractual waivers, keeping in mind that waiver should be permitted only in scenarios in which the waiver would not frustrate the underlying purpose of the statute in the first place. As a general matter, contractors should not engage in waiving any obligations under the applicable building or OSHA code. Any contractual provision that purports to allow a divergence from governing regulations should be examined closely because it is likely that the provisions will not be enforced by a court and the contractor will be responsible for any liability stemming from the waiver.

Disclaimer: The information contained in this article is for general educational information only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation.

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OSHA Issues the Final Beryllium Standard

The U.S. Department of Labor's Occupational Safety and Health Administration recently published a final rule revising the beryllium standard for general industry. The rule includes changes designed to clarify the standard and to simplify or improve compliance. These changes maintain protection for employees while ensuring that the standard is well understood and compliance is simple and straightforward.

The final rule adds a definition and revises definitions for five other terms, as well as amends requirements for "methods of compliance," "personal protective clothing and equipment," "hygiene areas and practices," "housekeeping," "medical surveillance," "hazard communication," and "recordkeeping." The rulemaking leaves the permissible exposure limit (PEL) of 0.2 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and short-term exposure limit (STEL) of 2.0 $\mu\text{g}/\text{m}^3$ in place.

The compliance date of this final standard as modified is September 14, 2020. The standard will affect approximately 50,500 workers employed in general industry and is estimated to yield minor net cost savings to employers. For more information, visit www.osha.gov.

Roofers Union Local #149/RIPF 35th Annual Scholarship Grant Program

In an effort to promote excellence in the roofing industry, Roofers Union Local #149 and the Roofing Industry Promotion Fund are working together to offer scholarship grants to worthy individuals.

The program offers scholarship grants in the amount of \$1,000.00 each, to those eligible individuals who are attending or planning to enroll at an accepted college or university.

Scholarship Grants are possible through contributions by Roofers Union Local #149, the Roofing Industry Promotion Fund and the participating roofing contractor employer of the recipient's parent or guardian.

The 35th Annual Scholarship Grant Program winner is:

- Cecilia Zepeda - Taylor, MI
Major: Biology



Cecilia Zepeda

Congratulations!

Roofing Alliance Is Accepting Scholarship Applications

The Roofing Alliance is accepting applications for its Melvin Kruger Endowed Scholarship Program 2021-22 academic scholarships. There are two scholarship opportunities available.

The Accredited Post-Secondary Institution Scholarship is for employees, their spouses and their dependent children who are pursuing postsecondary education. Scholarship recipients are awarded \$5,000 per year for up to four years of undergraduate study. Eligible applicants include full-time employees of an NRCA contractor or supplier member company or their dependent children or spouses. In addition, applicants must be high school seniors or graduates who plan to enroll or students who already are enrolled in a full-time undergraduate course of study directly related to a career in the roofing industry or building construction at an accredited two- or four-year college or university for an entire academic year.

The Accredited Career Technical Education Scholarship is for employees, their spouses and their dependent children who are pursuing an education at a vocational or technical trade school; the scholarship is not designed for careers that require a four-year degree. Scholarship recipients are awarded \$1,000 per year; awards are not renewable, but students may reapply each year provided they meet the requirements. Eligible applicants include full-time employees of an NRCA contractor or supplier member company or their dependent children or spouses. In addition, applicants must be high school seniors or graduates who plan to enroll or students who already are enrolled in a full-time course of study directly related to a career in the roofing industry at an accredited vocational or technical trade school for an entire academic year.

"Since the program began, a total of 131 students have received \$890,000 in scholarship awards," said Kyle Thomas, owner of Thomas Roofing Co. Inc., Mobile, Ala., and current president of the Roofing Alliance. "Supporting students who are interested in careers in the roofing industry ensures that the future of the industry remains strong. Contributions to the program are always encouraged."

The application deadline is 3 p.m. CST on Jan. 28, 2021. The online application is available [here](#).

For more information, [click here](#) or contact Bennett Judson, the Roofing Alliance's executive director, at (800) 323-9545, ext. 7513 or bjudson@roofingalliance.net.

Presidential election called for Joe Biden. With three states—Georgia, North Carolina and Alaska—still left to be called, former Vice President Joe Biden surpassed 270 electoral votes to secure the presidency. Similar to 2016, legal challenges and recounts will proceed, although those reviews are unlikely to change the outcome of the election. President-elect Biden has begun his “Build Back Better” transition team, including a new [website](#), and the announcement of key leadership roles in the new administration will be made soon. NRCA released a statement congratulating President-elect Biden and all winning congressional candidates and reiterated its commitment to working in a bipartisan manner to advance pro-growth tax policies; address workforce needs through expanding career and technical education, as well as balanced immigration reform; and implement regulatory policies that minimize burdens on employers. You can read the full statement by [clicking here](#).

Senate appears likely to stay in Republican hands. Control of the Senate in the 117th Congress, which convenes in January 2021, remains uncertain pending the outcome of two Senate races in Georgia. Because of unique election rules, incumbent Sens. David Perdue (R-Ga.) and Kelly Loeffler (R-Ga.) face Democratic challengers in special runoff elections Jan. 5, 2021. The Democrats must win both races to force a 50-50 split in the Senate, which would hand majority control to Democrats because Vice President-elect Kamala Harris, as president of the Senate, would be able to break tie votes. If Republicans win both Georgia seats, they will control the Senate 52-48, and if the parties split the races, Republicans will hold a narrow 51-49 majority. These results also are dependent on Sen. Thom Tillis (R-N.C.) maintaining his current lead over his Democratic challenger in a race that will not be called until Nov. 12 at the earliest. Sen. Dan Sullivan (R-Alaska) likely will win, but the state currently has only 50% of the votes tallied. Two Republicans lost their races—Sen. Cory Gardner (R-Colo.) and Sen. Martha McSally (R-Ariz.)—and the GOP picked up a seat in Alabama with Tommy Tuberville (R-Ala.) prevailing over incumbent Sen. Doug Jones (D-Ala.). Maintaining majority control of the Senate will enable Republicans to block the agenda of the incoming Biden administration assuming they remain united, forcing bipartisan cooperation to approve legislation in the upper body.

House Democrats retain control, but majority narrows. House control will remain under Democrat leadership in 2021, with results in about 20 races still outstanding as their majority is expected to narrow by about 10 seats. The congressional elections went unexpectedly well for House Republicans, particularly as they elected a record number of women, gained seats and saw potentially zero incumbents losing their races. Nancy Pelosi is favored to be re

-elected as Speaker in January 2021; however, there is much consternation within the Democratic caucus and even speculation regarding alternatives, such as Rep. Hakeem Jeffries (D-N.Y.), given the loss of seats under her leadership. House Republican leadership is expected to remain unchanged with elections being held the week of Nov. 17. The narrow House majority for the 117th Congress likely will force Democrats to recalibrate their agenda and strategy in 2021.

Congressional COVID-19 pandemic response. It remains unclear how Congress will proceed with further legislation to respond to the COVID-19 pandemic. House Speaker Pelosi and Secretary of the Treasury Steven Mnuchin, the administration’s lead negotiator, had narrowed their differences regarding a legislative package in the \$1.9 to \$2.2 trillion range during the weeks before the election, but Senate Republicans remained opposed to spending more than \$500 billion. Shortly after the election, Sen. McConnell said he believes Congress should pass a COVID-19 relief package during the lame duck session before the end of the year, potentially coupled with a year-end funding bill required by Dec. 11 to keep the government open. The split decision in the election results, in which Democrats won the White House while Republicans likely defended their Senate majority and made significant gains in the House, increases the chances of the COVID-19 package during the lame duck session. However, there is uncertainty regarding how President Trump and President-elect Biden will influence the negotiations during the coming weeks.

SBA “loan necessity questionnaire” for Paycheck Protection Program borrowers. On Oct. 26, the Small Business Administration announced it will require supplemental information to be used to evaluate the good faith certification for PPP loans of \$2 million or more. Although the forms—one to be used for for-profit businesses and the other for nonprofits—have not been published on SBA’s website, NRCA obtained copies of [Form 3509](#) and [Form 3510](#) for members to review before they receive a final version from their lenders. The completed form and any required supporting documents will be due within 10 business days of receipt from your lender. Then, within five business days, the lender is required to upload the information to the SBA forgiveness platform. After SBA receives the form, it may require additional information to complete the review and will base its determination on the totality of circumstances. Failure to complete the form “may result in SBA’s determination that you were ineligible for either the PPP loan, the PPP loan amount, or any forgiveness amount claimed, and SBA may seek repayment of the loan or pursue other available remedies.” Previously released guidance regarding “good faith certification” can be found under [FAQ #31](#) released by the Department of Treasury.

Judge orders the Small Business Administration to release names of all Paycheck Protection Program borrowers and precise loan amounts. On Nov. 5, a federal judge ruled the SBA must release detailed information for all PPP loans, including the names of borrowers and precise loan amounts, by Nov. 19. The SBA previously released details only for loans more than \$150,000, and amounts were categorized into ranges rather than precise dollar figures. This ruling also applies to SBA Economic Injury Disaster Loans. The SBA argued disclosing this information would violate privacy rights because the loans correspond to a business's payroll. The court order also requires the SBA "to supplement its prior disclosure with the names, addresses and precise loan amounts of all PPP and EIDL borrowers." The PPP provided 5.2 million loans, and about 4.5 million were for amounts of \$150,000 or less.

IRS provides tax inflation adjustments for 2021. On Oct. 26, the IRS released [Revenue Procedure 2020-45](#), which provides updated inflation adjustments for tax year 2021 for numerous items in the Internal Revenue Code. This includes updated limits to section 179 expensing, which allows qualifying businesses to immediately expense the cost of qualifying property rather than recovering such costs during multiple years through depreciation. The Tax Cuts and Jobs Act of 2017, with NRCA's support, included nonresidential roofs as qualifying property under Section 179, allowing qualifying taxpayers to deduct the cost of a roof replacement in the year the asset is placed in service. Also, the TCJA expanded the expensing limits under Section 179, and the IRS updated the maximum amount a business may expense in 2021, indexed for inflation, to \$1.05 million and the phase-out threshold to \$2.62 million. NRCA members may wish to inform existing and potential customers of this favorable tax treatment for nonresidential roofs. For more information and to obtain a sample letter you can use to market this favorable tax treatment to expand your business, please visit NRCA's website by [clicking here](#).

Department of Labor Enforcement Policy. On Sept. 24, Deputy Secretary of Labor Patrick Pizzella issued a memorandum to the heads of all agencies within its jurisdiction stating "enforcement agencies should not issue news releases before achieving a successful outcome" in agency enforcement proceedings. The memo further stated "appropriately-timed news releases support our efforts as enforcement agencies by allowing parties the opportunity to come into compliance or defend themselves on the merits." Within the Occupational Safety and Health Administration, this action reverses the policy pursued by the agency when it was headed by Dr. David Michaels during the Obama administration. Under the policy implemented by Michaels, OSHA routinely issued press releases when it issued citations for regulatory violations found during its investigations before the employer had the opportunity to challenge the violation and possibly have it rescinded.

Michaels indicated the policy of issuing such press statements upon the issuance of citations was intended to act as a deterrent to workplace safety violations by shaming employers who received citations. NRCA believes the new policy serves the interests of promoting a regulatory environment that best advances workplace safety and, therefore, welcomes this initiative.

President Trump's Executive Order 13950—Combating Race and Sex Stereotyping. On Sept. 22, President Trump signed [EO 13950](#), Combating Race and Sex Stereotyping, which states it is the policy of the U.S. "not to promote race or sex stereotyping or scapegoating." This order applies to the federal workforce, uniformed services and federal contractors and prohibits them from conducting workplace training that teaches what EO 13950 defines as "divisive concepts," such as the concept that one race or sex is inherently superior to another race or sex or that the U.S. is fundamentally racist or sexist. All new contracts beginning after Nov. 21 will incorporate these requirements. Violations may subject a contractor to cancellation, termination or suspension of its contract, as well as debarment. In late October, as required under the Executive Order, the Office of Federal Contract Compliance Programs published a Request for Information seeking "comments, information and materials from the public relating to workplace trainings that involve race or sex stereotyping or scapegoating," which can be found [here](#). Materials are due on or before Dec. 1.

Pandemic Emergency Unemployment Compensation and Pandemic Unemployment Assistance expires in December. Two unemployment benefit programs provided for in the CARES Act, the Pandemic Emergency Unemployment Compensation and Pandemic Unemployment Assistance, are set to expire in December without additional legislation from Congress. PUA gives states the option of extending unemployment compensation to independent contractors and other workers who typically are ineligible for unemployment benefits if they are unable to continue working because of COVID-19. These payments are retroactive for weeks of unemployment, partial employment or inability to work because of COVID-19 starting on or after Jan. 27, 2020; however, benefits cannot be paid for weeks of unemployment ending after Dec. 31, 2020. Under the PEUC program, states can provide up to 13 eligible weeks of federally funded benefits. Benefits are payable for weeks from March 29, 2020, through Dec. 26, 2020, if the individual has not used all 13 weeks of that extension by then. PEUC is the same weekly amount as regular unemployment benefits.

If you have any questions or would like more information regarding any of the issues discussed here, please contact NRCA's Washington, D.C., office at 800-338-5765.

Just Build It Career Virtual Expo 2020

“Just Build It!” Career Expo presented by Washtenaw Contractors Association was held virtually this year. Students had access to real-time and on-demand (recorded) experiences of the construction industry and possible careers.

Tom Jaranowski, JATC Coordinator, and Terrysa Green, Roofers Local #149 apprentice, participated in the Live Chat with Skilled Trades Apprenticeship Coordinators and Panel Discussion with Skilled Trades Apprentices and Journeymen along with other coordinator and apprentices from other construction trades.

“Just Build It!” is hopeful for an in-person, hands-on event for 2021. They are also working on providing online events throughout the year as well.



Birthday Wishes

George Schena

Lifetime Member

November 13

Jim Coppens

Mid Michigan Roofing

November 15

Brian Moore

Schreiber Corporation

November 29

Roger LaDuke

LaDuke Roofing & Sheet Metal

December 13

Kathy LaDuke

LaDuke Roofing & Sheet Metal

December 21

Dan Casey

T.F. Beck Company

January 7

Happy Anniversary



Tara & Jay Kakias

T.F. Beck Company

December 31

**134th Annual Convention and International Roofing Expo 2021—
Date Change**

—Save the Date—

The 134th Annual Convention and International Roofing Expo will now be held April 14-16, 2021 at Mandalay Bay Convention Center, Las Vegas, NV.



**2021 SMRCA Golf Outing
—Save the Date—**

SAVE THE DATE for the 2021 SMRCA Annual Golf Outing to be held at Twin Lakes Golf Club on Monday, May 24, 2021



**2021 MiRCA Convention
—Save the Date—**

SAVE THE DATE for the 2021 MiRCA Annual Convention to be held at Crystal Mountain—July 22-25, 2021



Upcoming Industry Trade Shows 2021

- Jan. 19-20 SPRI Annual Conference & Business Meeting
VIRTUAL
www.spri.org
- Apr. 14-16 International Roofing Expo 2021
Las Vegas, NV
www.theroofingexpo.com
- Apr. 23-24 Roofing Day in D.C.
Washington, D.C.
www.nrca.net/advocacy/roofingday
- May 4-6 NERCA’s Convention & Trade Show
Atlantic City, NJ
www.nerca.org
- June 16-19 AIA National Conference on Architecture
Philadelphia, PA
www.aiainternational.org
- June 27-29 Western Roofing Expo
Las Vegas, NV
www.westernroofingexpo.com
- July 21-23 FRSA’s 99th Annual Convention and the Florida Roofing & Sheet Metal Expo
Kissimmee, FL
www.floridarroof.com
- Nov. 9-11 2021 MRCA Conference & Expo
Milwaukee, WI
www.mrca.org

SMRCA Spells the Best in Roofing Services

- S**AFETY A safe jobsite is assured because SMRCA crews complete the M.U.S.T. Safety Training and Drug Testing.
- M**ULTIPLE SERVICES A SMRCA Roofing Contractor has the ability to provide the roof you need because of our expertise in a variety of roofing applications and techniques.
- R**ELIABLE SMRCA Contractors are Union trained professionals bringing an Industry leading standard of service, quality and knowledge to every project.
- C**ONFIDENCE Projects completed by SMRCA Contractors provide a Michigan roofing contractor 2 year standard workmanship warranty.
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Call us today at 586-759-2140 to receive our free "Roofing Facts" brochure or contact one of the SMRCA Contractors below for a no-cost estimate on your next roofing project.

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