# SMRCA Roving Roofer

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# US Department of Labor Announces Enhanced, Expanded Measures to Protect Workers From Hazards of Extreme Heat, Indoors and Out

**WASHINGTON** – To combat the hazards associated with extreme heat exposure – both indoors and outdoors – the White House announced enhanced and expanded efforts the U.S. Department of Labor is taking to address heat-related illnesses.

As part of the Biden-Harris administration's interagency effort and commitment to workplace safety, climate resilience, and environmental justice, the department's Occupational Safety and Health Administration is initiating enhanced measures to protect workers better in hot environments and reduce the dangers of exposure to ambient heat.

While heat illness is largely preventable, and commonly under-reported, thousands of workers are sickened each year by workplace heat exposure. Despite widespread under-reporting, 43 workers died from heat illness in 2019, and at least 2,410 others suffered serious injuries and illnesses. Increasing heat precipitated by climate change can cause lost productivity and work hours resulting in large wage losses for workers. The Atlantic Council's Adrienne Arsht-Rockefeller Foundation Resilience Center estimates the economic loss from heat to be at least \$100 billion annually – a number that could double by 2030 and quintuple by 2050 under a higher emissions scenario.

To emphasize its concern and take necessary action, OSHA is implementing an enforcement initiative on heat-related hazards, developing a National Emphasis Program on heat inspections, and launching a rulemaking process to develop a workplace heat standard. In addition, the agency is forming a National Advisory Committee on Occupational Safety and Health Heat Injury and Illness Prevention Work Group to provide better understanding of challenges and to identify and share best practices to protect workers.

"Throughout the nation, millions of workers face serious hazards from high temperatures both outdoors and indoors. Amid changing climate, the growing frequency and intensity of extreme heat events is increasing the dangers workers face, especially for workers of color who disproportionately work in essential jobs in tough conditions," said U.S. Department of Labor Secretary Marty Walsh. "As Secretary of Labor, my priority is to make sure we are taking appropriate action to keep workers healthy and safe on the job."

OSHA implemented an intervention and enforcement initiative recently to prevent and protect workers from heat-related illnesses and deaths while they are working in hazardous hot environments. The newly established initiative prioritizes heat-related interventions and inspections of work activities on days when the heat index exceeds 80 degrees Fahrenheit.

"While agricultural and construction workers often come to mind first when thinking about workers most exposed to heat hazards, without proper safety actions, sun protection and climate-control, intense heat can be harmful to a wide variety of workers indoors or outdoors and during any season," said Acting Assistant Secretary for Occupational Safety and Health Jim Frederick.

The OSHA initiative applies to indoor and outdoor worksites in general industry, construction, agriculture and maritime where potential heat-related hazards exist. On days when a recognized heat temperature can result in increased risks of heat-related illnesses, OSHA will increase enforcement efforts. Employers are encouraged to implement intervention methods on heat priority days proactively, including regularly taking breaks for water, rest, shade, training workers on how to identify common symptoms and what to do when a worker suspects a heat-related illness is occurring, and taking periodic measurements to determine workers' heat exposure.

OSHA Area Directors across the nation will institute the following:

- Prioritize inspections of heat-related complaints, referrals and employer-reported illnesses and initiate an onsite investigation where possible.
- Instruct compliance safety and health officers, during their travels to job sites, to conduct an intervention (providing the agency's heat poster/wallet card, discuss the importance of easy access to cool water, cooling areas and acclimatization) or opening an inspection when they observe employees performing strenuous work in hot conditions.

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 Expand the scope of other inspections to address heat-related hazards where worksite conditions or other evidence indicates these hazards may be present.

In October 2021, OSHA will take a significant step toward a federal heat standard to ensure protections in workplaces across the country by issuing an Advance Notice of Proposed Rulemaking on heat injury and illness prevention in outdoor and indoor work settings. The advance notice will initiate a comment period allowing OSHA to gather diverse perspectives and technical expertise on topics including heat stress thresholds, heat acclimatization

planning, exposure monitoring, and strategies to protect workers.

The agency is also working to establish a National Emphasis Program on heat hazard cases, which will target high-risk industries and focus agency resources and staff time on heat inspections. The 2022 National Emphasis Program will build on the existing Regional Emphasis Program for Heat Illnesses in OSHA's Region VI, which covers Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

#### **President Biden's Vaccine Mandate**

On September 9, President Biden announced a series of proposals intended to combat the resurgence of the COVID pandemic. Most notable about the President's announcement was his plan to mandate that private businesses with more than 100 employees require their employees to be vaccinated or undergo weekly COVID testing.

The President intends to push this mandate through OSHA's issuance of an emergency temporary standard. OSHA issues an emergency temporary standard under very limited circumstances. The agency must first determine that a grave danger to which workers are exposed exists, and that the emergency temporary standard is needed to provide protection from the danger. Once published in the Federal Register, an emergency temporary standard becomes effective immediately, without any opportunity for public comment. Notably, the emergency temporary standard does serve as a proposal for a permanent standard and is subject to the usual notice and comment rulemaking procedure for adopting a permanent standard, which must be finalized within six months. But, in the meantime, the emergency temporary standard is in place.

The OSHA emergency temporary standard is expected to require that employers with more than 100 employees provide paid time off for the time it takes workers to get vaccinated or recover if they are under the weather post-vaccination. For unvaccinated workers, the emergency temporary standard is expected to require that these workers produce a negative test result on at least a weekly basis before coming to work. It is unknown whether the employer or the unvaccinated worker will be responsible for the cost of weekly COVID testing, and it is also unknown whether the standard will require employers to pay unvaccinated workers for time spent getting a COVID test. Employers who do not comply with the standard when published will face penalties of up to \$13,653 per violation. When the emergency temporary standard in this instance will be published is unknown.

For those contractors in states with state OSHA plans, the state OSHA must have an emergency temporary standard that is at least as effective as federal OSHA's emergency temporary standard, and to have it in place within 30 days of the publication of the federal standard.

Litigation is sure to follow the publication of OSHA's anticipated emergency temporary standard. Indeed, as of the drafting of this e-blast, 24 GOP state attorneys general have threatened a lawsuit over the vaccine mandate. While we wait to see what will follow the publication of this emergency temporary standard, construction employers would be wise to check with their workforce to determine which of its employees are vaccinated. In this regard, the law does permit employers to ask whether employees are vaccinated. But the law does <u>not</u> permit employees to ask those employees who are not vaccinated why they are not vaccinated because that would be a violation of the Americans with Disabilities Act.

In the meantime, on the same day the President announced his intentions with regard to private employment, he also issued an Executive Order, effective immediately, which requires employees of federal contractors to be vaccinated, without a testing alternative, with an exception for those who qualify for an accommodation.

When OSHA does publish its emergency temporary standard implementing the President's vaccine mandate, we will be sure to provide you with the details necessary for compliance.

In the meantime, if you have any questions about vaccine mandates, please contact Philip J. Siegel, Esq., Hendrick, Phillips, Salzman & Siegel, P.C. via e-mail at pjs@hpsslaw.com, or you can reach him directly at (404) 469-9196.

### **Birthday Wishes**



Anthony Schena - Schena Roofing & Sheet Metal Co., Inc.
October 7

Pat Fritsch - Roofing Products of Michigan, Inc.
October 16

Stacy Foley - Crane Roofing, Inc.
October 20

Joe Bieszki - Architectural Building Specialties
October 26

George Schena - Schena Roofing & Sheet Metal Co., Inc.
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

WELCOME NEW MEMBER



#### ATAS International, Inc.

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## **JATC Training Center Information**

Journeyworkers Skill Advancement Training Classes are now available at no cost to all Detroit 149 members.

Dues must be current in order to enter the Training Center.

All classes begin at 6:30 pm. Apprentice 2 & Single Ply 1

Apprentice 2 & Single Ply 1
Apprentice 1 & Single Ply 2
BUR 1 & Steep Slope 1
BUR 2 & Steep Slope 2
Apprentice 7 & 8

Monday evenings
Tuesday evenings
Wednesday evenings
Thursday evenings
Thursday evenings

If you are interested in any of these classes, contact Thomas Jaranowski at the Training Center, 248-543-3847, or <a href="mailto:TJaranowski@DetroitRoofers.org">TJaranowski@DetroitRoofers.org</a> to make arrangements.

# \*\* SAVE THE DATES \*\* For Upcoming 2022 Events

#### **SMRCA GOLF OUTING**

SMRCA Annual Golf Outing will be held on Monday, May 23, 2022 at Twin Lakes Golf Club



#### **MIRCA ANNUAL CONVENTION**



MiRCA Annual Convention will be held **July 28-31, 2022** at Boyne Mountain Resort

# Upcoming Industry Trade Shows 2021 & 2022

Oct. MetalCon 6-8 Tampa, FL www.metalcon.com Nov. 71st Annual MRCA Conference and Expo 9-11 Milwaukee, WI www.mrca.org CRCA Tradeshow & Seminars Ian 19-21 Chicago, IL www.crca.org International Roofing Expo Feb New Orleans, LA www.theroofingexpo.com 1-3

### **Happy Retirement**



#### **Roofers Union President Announces Retirement**

Kinsey M. Robinson has announced that he is stepping down as International President of the United Union of Roofers, Waterproofers and Allied Workers on January 8, 2022. Robinson stated that "after 55 years of membership and being afforded the unique privilege of serving in the capacity of a general officer for 37 years, it is now time to turn the reins of power over to a younger generation of leaders. Change is positive and necessary in order for new ideas and strategies to emerge so that our union may continue to grow and prosper."

Upon Robinson's announcement, the union's International Executive Board elected current International Secretary-Treasurer James A. Hadel to assume the position of International President effective January 9, 2022. Hadel was elected International Vice President in 1998 and then International Secretary-Treasurer in 2018. Assistant to the International President Mitch Terhaar was elected to fill the position of International Secretary-Treasurer to be vacated by Hadel, effective January 9, 2022. Terhaar was appointed International Representative in 2015 and Assistant to the International President in 2018.

Infrastructure Investment and Jobs Act passes the Senate. On Aug. 10, the Senate passed a roughly \$1 trillion infrastructure bill with a bipartisan vote of 69-30. This legislation provides funding for the U.S.' physical infrastructure, which Congress has been attempting to address unsuccessfully for years and was a major Roofing Day in D.C. advocacy issue in 2019 and 2021. It recognizes the role of the built environment by advancing resiliency, energy efficiency, renewable energy and sustainability with new investments in airports, schools and other buildings vital to strong communities. Also, the bill helps develop career skills in the energy-efficiency and renewable-energy industries, in which the roofing industry plays a vital role. This legislation has been closely tied with a Democrat-led effort to pass a \$3.5 trillion spending bill, and the House of Representatives is negotiating regarding the sequence of the bills, with moderate members locking in a promise of an infrastructure vote by Sept. 27. "NRCA recently led an effort with roofing industry allies to support the Infrastructure Investment and Jobs Act by crafting a letter, which can be read here.

House and Senate approve Budget Resolution. On Aug. 24, the House passed a Budget Resolution for 2022 (S. Con. Res. 14) on a party-line vote with all Democrats supporting and Republicans opposing, as the Senate did previously. Passage of the resolution sets in motion the development of a \$3.5 trillion "human infrastructure" package—a key priority of the Biden administration—under the reconciliation process that allows legislation to pass the Senate with a simple majority vote. The package is expected to include new and enhanced government programs, including child care subsidies, a paid leave program, clean energy incentives, affordable housing funding and expanded educational investments. Democrats also have proposed offsetting the cost with tax increases, some of which could affect many small and family-owned businesses. The path to final approval of the package may be difficult as Democrats in the House and Senate have expressed serious concerns with the proposed \$3.5 trillion price tag. Additionally, only provisions affecting the federal budget are allowed in reconciliation bills, so some policies proposed for inclusion may be ruled out of order when the bill goes to the Senate.

Deferred Action for Childhood Arrivals and Temporary Protected Status fixes could be included in \$3.5 trillion bill. House and Senate Democrats have proposed including immigration provisions in the budget reconciliation bill being drafted by lawmakers. This is expected to include the American Dream and Promise Act (H.R. 6), legislation to provide permanent legal status for individuals working under Temporary Protected Status, which allows individuals who come to the U.S. because of natural disasters and other humanitarian situations to work legally for specified periods of time, as well as undocumented individuals brought to the U.S. as minor children, including those in the DACA program. NRCA supports H.R. 6, which passed the House but has stalled in the Senate, given its effect on the roofing workforce, and advocated for it during Roofing Day in D.C. 2021. In addition, the reconciliation bill may include provisions to provide a pathway to legal status for certain qualifying undocumented immigrants who can demonstrate they have been working in the U.S. for many years and meet other criteria. However, it is unclear whether immigration provisions will be considered given the budget-related rules of the reconciliation process.

Modifications to the 179D commercial buildings energy-efficiency tax deduction. Congress is considering changes to the 179D tax

deduction that may improve the deduction's utility for the installation of energy-efficient roof systems. Congress appears to be more interested in modifying this existing deduction than creating new tax incentives such as the E-QUIP Act, which allows straight line depreciation over a 10-year period of energy-efficient qualified improvement property. NRCA will continue to support improving 179D and passage of the E-QUIP Act. NRCA sent a letter to the Senate and the House of Representatives with roofing industry allies to support the proposed modifications to 179D contained in the Clean Energy for America Act and to communicate clarifications that would further improve current proposals.

Historic tax hikes could be coming soon. Congress has taken the first step in enacting one of the largest tax increases ever considered. The budget resolution passed by both chambers late this summer is paving the way for trillions of dollars in new federal spending combined with nearly \$2 trillion in tax hikes in an upcoming partisan reconciliation package. These tax hikes are being marketed as "modest" and a "middle ground." For roofing industry employers, they could be significant. They would raise taxes on your business when you earn a profit, when you try to sell it and when you pass it on to the next generation. This triple threat endangers the ability of companies such as NRCA members to compete and survive. NRCA is working with allied coalitions to oppose these tax hikes at every turn. Please take a moment to let your members of Congress know you oppose the tax increases by clicking on NRCA Action Alert: Urge your members of Congress to oppose historic tax hikes.

Can employers mandate COVID-19 vaccination? The short answer is yes, with some exceptions. The Equal Employment Opportunity Commission released information May 28, to help employers understand questions arising under the federal equal employment opportunity laws, which included vaccination requirements for employees. Key updates include Federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, provided employers comply with the reasonable accommodation provisions of the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964 and other EEO considerations. Laws that are not in EEOC's jurisdiction may place additional restrictions on employers.

Democrats have the majority on the National Labor Relations Board. David Prouty, a Democrat appointed by President Biden and recently confirmed by the Senate, was sworn in as a member of the National Labor Relations Board Aug. 28, after the term of Republican-appointed member William Emanual expired Aug. 27. With Prouty's addition and the recent appointment of Gwynne Wilcox—also appointed by President Biden—Democrats now have a 3-2 majority on the NLRB. The new majority will create the opportunity for the quasi-judicial agency, which adjudicates cases brought under federal labor laws, to reverse positions taken during the Trump administration. Some observers expect the NLRB majority to be aggressive in pursuing decisions favored by organized labor, but various factors could impede implementation of such an agenda.

Congress enters a chaotic September filled with must-pass bills. Congress often waits until the last minute to approve must-pass pieces of legislation, such as government funding. Unfortunately, with less than 15 days left on the legislative calendar before the federal government's fiscal year ends Sept. 30, Congress must act quickly. In addition to funding needed to keep the federal government open, Surface Transportation and the National Flood Insurance Program must be reauthorized, and various

COVID-19 assistance programs also expire, including enhanced unemployment insurance Sept. 6. Also, leadership in the House promised a vote on the Senate -passed Infrastructure Investment and Jobs Act by Sept. 27. Closely following September, the federal eviction moratorium expires Oct. 3, and the federal government is expected to hit its debt ceiling in October or November—all items that could see progress in September.

#### ROOFPAC holds successful 2021 IRE event in Las

Vegas. ROOFPAC partnered with National Women in Roofing to host "An Evening in Las Vegas" during the 2021 International Roofing Expo® in Las Vegas to help raise critically needed funds to support its mission of electing more pro-business candidates to Congress. The evening consisted of a reception and live auction at the iconic House of Blues. More than 120 attendees enjoyed cocktails and a buffet dinner and bid on items during the live auction, emceed by the renowned Donald Spalding. NRCA thanks all participants and sponsors, including its platinum sponsors—ABC Supply Co. Inc., Firestone Building Products, GAF, Johns Manville Roofing Systems and Sherwin-Williams Coil Coatings—for their continued support of ROOFPAC. For more information and to learn how you can support ROOFPAC, please visit here or contact Teri Dorn at (202) 510-0920 or tdorn@nrca.net.

#### ROOFPAC announces Emerging Leaders Club.

This month, ROOFPAC—the only PAC solely dedicated to advocating for the roofing industry—is excited to launch the Emerging Leaders Club, which joins two long-standing donor member clubs, each with their own benefits. ROOFPAC's traditional donor member clubs-the Political Insiders Council (\$5,000 annual donation) and Capitol Hill Club (\$1,000 annual donation)-offer different ways to help raise funds targeted toward NRCA's legislative goals. Members who join this new Emerging Leaders Club (\$250 annual donation) will receive name recognition on NRCA's website, as well as a swag bag and holiday ornament. All contributions are welcome and vital to ROOFPAC's success; each dollar advances the NRCA advocacy team's efforts supporting pro-business members of Congress and candidates running for office. Unfortunately, funding has come up short during the past year after receptions and other events were postponed or canceled. Given real economic uncertainties, a new administration and one-party control of Congress, it is more important than ever to have your voice heard in Washington, D.C. To contribute and for more information regarding the donor member clubs, please visit here or contact Teri Dorn at (202) 510-0920 or tdorn@nrca.net.

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.

#### **How Federal COVID-19 Mandates May Impact Construction**

Last month, President Joe Biden announced a safety mandate that affects federal employees, as well as contractors who work on federal sites. According to the mandate, these workers must either a) confirm they have received the COVID-19 vaccination, or b) agree to wear masks at all times and be regularly screened for the coronavirus.

He followed that up with a vaccine mandate for all federal workers and contractors.

What does this mean for roofing contractors and other construction workers with federal contracts?

#### What the Policy States

According to this new policy, along with federal employees, federal contractors working on -site must sign a form attesting to their vaccination status. If they cannot confirm they are fully vaccinated, they are required to wear masks while at the federal workplace, practice physical distancing, and undergo either weekly or twice-weekly COVID-19 screenings. Unvaccinated federal contractors will also experience official travel restrictions.

Even visitors to federal facilities are required to comply with safety measures. For example, they must sign the vaccination confirmation form or, if not applicable, must wear masks on-site and provide proof of a negative COVID-19 test within the previous three days.

In addition, Biden requested that the administration begin applying similar requirements to all federal contractors, even if they do not work at federal facilities. He also has instructed the Department of Defense to review adding the COVID-19 vaccine to those immunizations required for military service members.

The White House established the Safe Federal Workplace Task Force to provide safety guidance during the pandemic. This group has indicated that each federal agency must create a program for testing federal contractors and employees who are not vaccinated or decline to share their status.

#### **How Contractors Can Respond**

Since federal contractors employ approximately a quarter of the U.S. workforce, this directive affects a large group. These workers represent a variety of industries, including manufacturing and construction.

The new policy, at present, has different standards for contractors working on-site and those who do not, which will be a logistical challenge for those monitoring their compliance with the vaccination status confirmation. In many cases, contractors work at federal facilities on a regular basis, but others are needed less consistently, which also complicates the issue. In addition, agencies, will need to determine who does the necessary testing and where.

Some federal contractors have already made the decision to require all their workers to be fully vaccinated. And it sounds as though the White House may issue an across-the-board requirement soon.

If you and your workers are under a federal contract, it is likely in your best interest to review your current vaccination and mask policy, then make changes to it to comply with this new directive. Take stock of how many workers are vaccinated, and determine how you can track those who are not. You will need to ensure they follow the mask and testing requirements.

Although some argue that this policy is a case of government overreach, there may be little recourse. To protect your livelihood, it is essential that you retain your government contracts by complying with the new directive.

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 advise, nor should it be relied upon as legal advice for your specific factual pattern or situation.

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#### IRS Reminds Business Owners to Correctly Identify Workers as Employees or Independent Contractors

IR-2021-186, September 15, 2021

WASHINGTON — During National Small Business Week, the Internal Revenue Service reminds business owners that it's critical to correctly determine whether the individuals providing services are employees or independent contractors.

An employee is generally considered to be anyone who performs services, if the business can control what will be done and how it will be done. What matters is that the business has the right to control the details of how the worker's services are performed. Independent contractors are normally people in an independent trade, business or profession in which they offer their services to the public. Doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers or auctioneers are generally independent contractors.

#### Independent contractor vs. employee

Whether a worker is an independent contractor or an employee depends on the relationship between the worker and the business. Generally, there are three categories to examine:

- Behavioral Control Does the company control or have the right to control what the worker does and how the worker does the job?
- Financial Control Does the business direct or control the financial and business aspects of the worker's job. Are the business aspects of the worker's job controlled by the payer? (Things like how the worker is paid, are expenses reimbursed, who provides tools/supplies, etc.)
- Relationship of the Parties Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

#### Misclassified worker

Misclassifying workers as independent contractors adversely affects employees because the employer's share of taxes is not paid, and the employee's share is not withheld. If a business misclassified an employee without a reasonable basis, it could be held liable for employment taxes for that worker. Generally, an employer must withhold and pay income taxes, Social Security and Medicare taxes, as well as unemployment taxes. Workers who believe they have been improperly classified as independent contractors can use IRS Form 8919, Uncollected Social Security and Medicare Tax on Wages to figure and report their share of uncollected Social Security and Medicare taxes due on their compensation.

#### **Voluntary Classification Settlement Program**

The Voluntary Classification Settlement Program (VCSP) is an optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future tax periods for employment tax purposes with partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat their workers (or a class or group of workers) as employees. Taxpayers must meet certain

eligibility requirements, apply by filing Form 8952, Application for Voluntary Classification Settlement Program, and enter into a closing agreement with the IRS.

#### Who is self-employed?

Generally, someone is self-employed if any of the following apply to them.

- They carry on a trade or business as a sole proprietor or an independent contractor.
- They are a member of a partnership that carries on a trade or business.
- They are otherwise in business for themselves (including a part-time business).

Self-employed individuals generally are required to file an annual tax return and pay estimated tax quarterly. They generally must pay self-employment tax (Social Security and Medicare tax) as well as income tax. Self-employed taxpayers may be able to claim the home office deduction if they use part of a home for business.

#### What about the gig economy?

The gig economy – also called sharing economy or access economy–is activity where people earn income providing on-demand work, services or goods. **Gig economy income** must be reported on a tax return, even if the income is: from part-time, temporary or side work; not reported on a Form 1099-K, 1099-MISC, W-2 or other income statement; or paid in any form, including cash, property, goods or virtual currency.

#### Help spread the word - Advance Child Tax Credit

The IRS encourages employers to help get the word out about the advance payments of the Child Tax Credit during Small Business Week. Employers have direct access to many who may receive this credit. More information on the Advance Child Tax Credit is available on IRS.gov. The website has tools employers can use to deliver this information, including e-posters, drop-in articles (for paycheck stuffers, newsletters) and social media posts to share.

#### For more information and help

The Self-Employed Individuals Tax Center has information for those who are in an independent trade, business or profession in which they offer their services to the general public.

Small Business Taxes: The Virtual Workshop is composed of nine interactive lessons designed to help new small business owners learn their tax rights and responsibilities.

The IRS Video Portal contains video and audio presentations on topics of interest to small businesses, individuals and tax professionals.

For more information visit: www.irs.gov

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