Small Business Management

by

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Many surveyors own what is considered a small business or employed in a small business. Education programs often fail to provide surveyors with the information needed to start or manage a small business. This workshop will focus on the legal considerations for starting and managing a small business.

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https://umaine.edu/svt/faculty/hermansen-articles/

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Business Entities (Sole Proprietor, Partnership, Corporation, LLC) .... 10 min.
Working Relationships (Employee, Independent Contractor, Agent) .... 10 min.
Licensing (Professional, CoA) .... 5 min.
Seals and Signatures (Where, When, What) .... 5 min.
Payroll Taxes (FICA, SUTA, Income, Medicare) .... 10 min.
Fair Labor Standards Act (Overtime, Compensation, Comp Time) .... 10 min.
OSHA (Requirements, Prevention) .... 10 min.
Discrimination Laws (Title VII, EPA, ADEA, ADA, GINA, IRCA, FMLA, VEVRAA) .... 10 min.
Davis Bacon Act .... 10 min.
<u>Minority or Set Aside Business Programs .... 10 min</u>.
Total .... 90 min.

Business Entities

Does the surveyor have the best business entity for:

- Taxes
- Asset Protection
- Ease of Operation
- Transfer to Others

<u>Sole Proprietorship</u>: A sole proprietorship is a business that has no separate existence from its owner. A sole proprietorship is the easiest and most direct form of business entity. The licensed surveyor that offers surveying services to the public is a sole proprietorship. The young teenager that begins mowing lawns for homeowners is a sole proprietorship. The college student that paints rooms and houses on the weekend is a sole proprietorship.

The sole proprietorship has several advantages:

- The management is simple and direct.
- There is one source for all authority and responsibility
- Taxes are based on profits which are reported as personal income
- There are no special legal procedures to set up a sole proprietorship
- The administration is adaptable to the person and situation.

There are several disadvantages with a sole proprietorship.

- The sole proprietorship does not continue with the death of the sole proprietor. As a consequence, a sole proprietor that has a thriving business built on trust, quality services, and widespread marketing ceases upon the death of the sole proprietor.
- The sole proprietor assumes personal liability for all negligence they or an employee may cause. A mistake by the sole proprietor or an employee could cost the sole proprietorship the loss of not only their business but their home and personal property.

<u>Partnership</u>: A partnership is a business entity where there is an arrangement between two or more people to go into business operations and share ownership, profits, and liabilities. There are three types of partnerships:
Absent an express agreement, partners …

- have shared responsibility for the management and operations of the partnership.
- share authority for the decisions made. Thus one partner can bind all partners in a contract with a client, supplier, bank, or other business.
- have a fiduciary relationship to the other partners. A fiduciary relationship requires each partner has an obligation to the other partner to act entirely on the other party's behalf and best interest.
- have share a personal liability for their own actions and the partner is liable for the other partners' actions. If one partner is negligent the injured party can sue the negligent partner, the partnership, any other partner, or everyone. The non-negligent partner cannot claim "it wasn't me that harmed you!"
- share profits and costs. Ordinarily profits and costs are shared in the proportion to the partner's partnership interest. Where there are five partners, each is assumed to share 20% in the profits or 20% of the losses. However, if there is an agreement stating unequal shares in the partnership, profits and losses are shared according to the actual partnership share or the terms of the agreement.

- are taxed on their share of the profits of the partnership as personal income. Therefore, whatever the partner's share is in profits, these profits are combined with other personal income for income tax purposes.
- do not have to go through a special legal procedure to set up the partnership unless the partners are trying to establish a limited partnership.
- can cause the dissolution of the partnership upon demand of a partner or the death of a partner. If the partnership is successful and has a widespread market, the dissolution of the partnership can have serious financial implications. For example, if a partnership is worth $1,000,000 and one of the partners in a partnership of two people dies, the heirs will want half the partnership of $500,000 sooner rather than later. This often causes the partners to sell all their assets and pay the heir their share.

Corporation: A corporation is a legal entity that is separate and distinct from the owners. A corporation is a legal person. Corporations enjoy most of the rights and responsibilities that individuals possess. The process for forming a corporation generally involves filing articles of incorporation with the secretary of state in a state or other designated state department. The corporation issues stocks that represent the ownership of the corporation much like a vehicle title represents the ownership of a vehicle. The shareholders will elect the board of directors in an annual meeting.

- Corporation generally assumes all business liability while personal assets are protected.
- Legal procedures and paperwork necessary to create a legal "person."
- Corporation generally assumes all business liability while personal assets are protected.
- Corporation is the employer while everyone is considered an employee - even the boss.
- Lower taxes (more deductibles) but double taxation (corporate profits and employee earnings)
- More record keeping, costs, and complexity with records
- Perpetual life
- Sometimes there is confusion with authority and responsibility.
- Assets and power are concentrated in the stocks

Forms:

- C Corporation - Publicly owned stocks, several types of stocks possible, etc.
- S Corporation - Treated similar to partnership for tax purposes. No two classes of stock allowed.
- Professional - Provides retirement (reduced by TEFRA) and employee benefits (e.g. untaxed money used to buy term insurance and health benefits) beyond those available as a partnership.

Limited Liability Company: A mix between partnership and corporation. It is more flexible than a corporation.

- Members are not personally liable for negligence of LLC
- Profits pass to members without tax consequences of C corporation (similar to S Corporation)
- LLC may be "member managed" firms or a "manager managed" firm. A multi-member firm can either be taxed as a partnership or corporation.

Working Relationships

If a business misclassifies an employee as an independent contractor, the business will be liable for all missed payroll taxes, interest, and fines.

Employee - An employee is an individual working for and paid by an employer to perform services in the affairs of the employer and who with respect to the physical conduct in the performance of the services is subject to the employer's control or right to control. The surveying employee may be either a salaried employee or hourly employee. An employee would be given a W-2 for tax purposes.

Employer - Eventually, the individual may choose to start their own business and enter into the legal relationship of an employer. The employer controls or has the right to control the employee. The employer may be an individual, corporation, limited liability corporation, partnership, or other legal entity often referred to as a 'person'. This course will use the term survey firm to encompass all surveying businesses.

The employer is responsible for collecting payroll taxes, having workers compensation insurance, unemployment insurance, health insurance, etc. coverage for the employee

A sole proprietor that incorporates and becomes the 'president' of the corporation, goes from being an employer to an employee since the corporation now becomes the employer. The owner of the corporation, regardless of her role in the corporation, is still an employee of the corporation.

Contractor - Another legal working relationship is an independent contractor or simply referred to as a contractor. The independent contractor is typically a person that offers a separate specialty performed during a temporary working relationship with another person, providing services only for a particular job. An independent contractor is a person who renders services in the course of a profession, trade, or skill toward a limited job objective. While an employer has the right to control employees, a person hiring an independent contractor does not have the right to control the contractor. The independent contractor is told what needs to be done, not how to do it.

If a surveying firm contracts to provide surveying services, the surveying firm is an independent contractor working for a client. An independent contractor would be given a 1099 form for tax purposes. The 1099 is given in order to document the fee given to the independent contractor in order to show at tax reporting time that the fee given to an independent contractor can be claimed as a business tax deduction.

The landowner would not ordinarily give the surveyor a 1099 for surveying the landowner's boundary unless the landowner is developing their property as a business venture. The landowner would not likely be able to claim the surveying expenses as a tax deduction and therefore does not need to document the payment of a fee to the surveyor.

The construction contractor that hires the surveyor to stake the construction site should issue the surveying firm a 1099 at the end of the services or the tax year. In this situation, the construction contractor would claim the survey firm's fee as a business deduction and wish to document the fee for tax purposes.

Agency: Another working legal relationship is the agent and principal, known as an agency relationship. In an agency relationship there is consent for one person, known as the agent, to act on behalf of another, known as the principal. The agent is the person acting on behalf of the principal.

Licensing

If a business does not have the correct licenses to market, offer, and provide services in a jurisdiction, the licensee/owner will be disciplined by the board, stopped from practice, and fined by the jurisdiction.

Professional Licensing – Every state requires the person be licensed as a surveyor to advertise, offer, or provide surveying services. There are certain exemptions for limited work in some states.

- Boundary retracement services
- Photogrammetry
- GIS
- Ancillary Engineering

Certificate of Authorization – A certificate of authorization can be thought of as a license for the surveying firm. Many states require a certificate of authorization in order for a surveying firm to provide surveying services to the public.

Business License – Some communities require a license to provide services within the community.

Seal & Signature

If a surveyor does not property sign and seal documents, the licensee may be subject to liability and discipline by the licensing board.

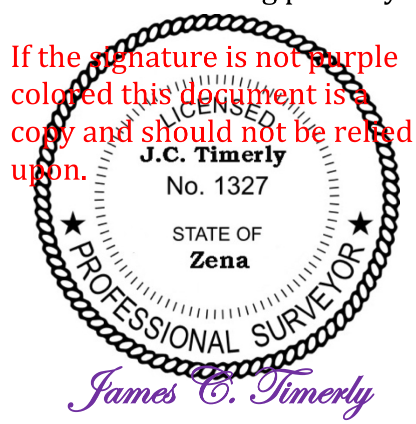
<u>As a general rule</u>: Both a signature and seal are required. Sign and seal all documents:

- Sent to the client that may or could be relied upon that express a professional opinion and
- May be reasonably relied upon by the public.

Documents include:

- Plats
- Reports
- Descriptions
- Letters with opinions

<u>Type, Location, Contents</u>: Use a crimp seal whenever possible. If not possible, use different colored inks with a warning partially obscuring the seal (if allowed).



<u>Responsibility versus Prepared/Directed/Controlled</u>: Some jurisdictions allow the licensee to seal a document that they take responsibility for. Other jurisdictions only allow the licensee the seal a document that they personally took control, directed, or prepared.

Payroll Taxes

It is an employer's responsibility to make sure that all payroll taxes (both imposed on employer and employee) be paid to the government on a quarterly basis.

Defined - Payroll taxes are those taxes deducted from an employee's paycheck. Payroll taxes are a part of life whether an employee or employer. Understanding them is necessary to operate a surveying business.

Payroll taxes are taxes imposed on employers and employees regardless of their income. Typically, payroll taxes are determined as a percentage of pay. Employers are required to pay taxes quarterly.

Payroll taxes generally fall into two categories: deductions from an employee's wages, and taxes paid by the employer based on the employee's wages. Employers are required to withhold all payroll taxes of imposed on the employee from an employee's wages.

Employee Taxes

Federal Income Taxes	Depending on Income
State Income Taxes	Depending on State & Income
Local Income Taxes	Depending on Locality
Social Security Taxes	6.2 percent up to the annual maximum
Medicare Taxes	1.45 percent of wages
State Social Taxes	Depending on State

Employer Taxes

Social Security Taxes	6.2 percent up to the annual maximum
Medicare Taxes	1.45 percent of wages
State Social Taxes	Depending on State
Federal Unemployment Taxes (FUTA)	Varies
State Unemployment Taxes (SUTA)	Varies

These taxes include income tax, social security contributions, and insurance taxes such as unemployment and disability or workers comp. Social security and Medicare contributions are known as FICA taxes taken from the Federal Insurance Contributions Act legislation mandating these taxes. These taxes provide benefits for retirees, the disabled, and children of deceased workers.

Federal social insurance taxes consisting of a 12.4% tax on wages up to an annual wage in excess of $100,000. Half or 6.2% is paid by the employer and 6.2% is paid by the employee, though the employer is required to send the entire 12.4% to the federal government. The employee's 6.2% contribution is reflected on their pay stub.

There is a tax of 2.9% on wages for Medicare where the employer and employee each pay half or 1.45%. In other words, the employer must send almost 15% of each employee's wages to the federal government. Payments to the federal government consisting of all payroll taxes are required to be made quarterly or every three months.

There are also unemployment insurance taxes collected by the federal government from the employer only known as FUTA. The tax is a certain percentage of taxable wages up to a maximum a cap. For example, in 2019, the FUTA tax rate was 6% of the first $7,000 in wages earned by an employee during the year. Part of the FUTA tax may be credited by payments made to the state for a state unemployment tax known as SUTA.

States also impose unemployment insurance tax and disability insurance taxes. The tax rate and cap vary by jurisdiction.

Failure to timely and properly pay federal payroll taxes results in an automatic penalty of 2% to 10% at the federal level. Penalties often apply at state and local levels as well. If the employer fails to pay any taxes when required to do so, there is a penalty of up to 100% of the amount not paid that can be assessed against the employer.

Fair Labor Standards Act

The Fair Labor Standards Act establishes guidelines for wage and hourly working time. Ordinarily, FLSA requires 1.5 times the hourly rate for work time in excess of 40 hours per week.

Compensation Time (Comp Time) is allowed in lieu of overtime pay for public employees, it is strictly limited for private employees. Private employers can allow comp time when:

1. Taken within the same work week or
2. Compensatory Time Program in sequential workweeks allowed at time and one-half off provided:

- Employed by hour and fixed hourly rates or a salary for a fixed number of hours per week
- Pay period longer than a week
- Time-off adjustments in the ratio of 1.5 hours for each overtime hour worked within the pay period, and
- Straight-time and overtime compensation for the hours actually worked in each workweek of the pay period must be computed on the established hourly rates and paid currently at the end of each period, without regard to the hours worked or earnings in any other pay period.

Government Employees – No comp time restrictions within the pay period. Maximum amount of accrual. Must get 1.5 times off.

Stock Options — Employers must count the value of stock options as part of the base rate used to calculate overtime pay for nonexempt employees. ESOPS allowed with certain exceptions.

FLSA Exempt Employees – Bona-fide executive, administrative, or professional employees paid on a salary basis for salaries in excess of $47,700 (approximate, changes over time, and number of employees). It is narrowly construed against the employer seeking to assert the exemption.

- <u>Executive</u>: Management of an enterprise or department or directs the work of two or more employees. Note the title of the person means nothing!
- <u>Administrative</u>: Performing office or non-manual work related to management policies, performing functions in the administration of an education establishment; and customarily and regularly exercises discretion and independent judgment.
- <u>Professional</u>: Work requiring advanced knowledge or skill customarily acquired by study; work that is original or creative in character in a recognized field of artistic endeavor depending on the imagination of the employee; teaching; or work that requires theoretical and practical application of knowledge in computers or software; or work that requires consistent exercise of discretion and judgment in performance.

Salary: Employer cannot make deductions from the salary for absences of less than one full day or allow suspensions without pay for misconduct.

Determining Hours Worked:

1. On duty time even if inactive.
2. Off duty time if it is not long enough to enable the employee to use the off time effectively.
3. On-Call time depending on the degree the employee is free to engage in personal activities and any agreement between parties.
4. Travel time except when going to or from the start or end of the performance period (end of work day). Travel time on planes, boats, or bus normally not counted.

Compensation:

1. Bonuses are included in a regular rate if paid for the quality, quantity, or efficiency of work.
2. Prizes are included depending upon time spent in competition, relationship between contest and usual work, and whether the employee was urged to participate (e.g., sales competition). Prizes pursuant to a suggestion system are exempt (prizes based on value to company).
1. Gifts are not included if made as a reward for service. Gifts must not be dependent on hours worked, production, or efficiency. They can not be substantial, considered part of wages, and pursuant to a contract.

Alternative Work Schedules: Employers may contract for alternative work schedules that minimize overtime payments (known as a Belo Agreement). A Belo Agreement allows the employer to pay a guaranteed rate for up to 60 hours so long as the average does not dip below the minimum wage rate.
Employer may also use a fluctuating workweek arrangement. The employer pays the employee a fixed salary each week plus one half the rate for time in excess of 40 hours.

> Example: An employee earns $400 a week and works 50 hours one week. The employee would receive $440 that week (400/50 = $8.00 then extra is = 10 hrs * $8/2) The result is that the more overtime, the less per hour the employee receives.

OSHA

OSHA is an acronym that stands for Occupational Safety and Health Administration. OSHA, is responsible for protecting employee safety. OSHA was created in 1970 to ensure workplace laws and standards.

Accidents do happen. Survey firms are not immune from accidents occurring to employees although surveying is a far safer occupation than most. Approximately half of OSHA reported deaths and accidents involved survey firm employees injured by automobiles or along roadways – that is survey firm employees working along, in, or near roads. The second major source of OSHA reportable accidents involved electric shocks when employees were killed or injured when survey poles came in contact with electric wires or metal rods were driven into the ground or hit overhead electric lines. The third source of accidents and injuries were physical ailments such as heart attacks, heat stroke, etc. Next were death and injuries of employees that were struck by trains while working along railroad tracks. Riding ATVs, using power saws, cutting vegetation, and falls while working were other notable sources of death and injuries among survey firm employees.

OSHA coverage:

- Private sector employers and their workers and some public sector employers and their workers.
- Does not cover self-employed workers or immediate members of farm families. (Therefore, a sole proprietor without any employees does not have to worry about OSHA regulations.)

Requirement: An employer is required to

- inspect the business for potential hazards,
- eliminate or minimize hazards,
- keep records of injuries and illness,
- train employees to recognize safety and health hazards,
- educate employees on precautions to prevent accidents and
- require employees to follow safety rules.
- have OSHA regulations and information about workplace hazards, precautions, and procedures at the office and place of employment.

Discrimination Laws

Note: States often have more stringent discrimination laws requiring fewer employees than the federal government.

Title VII of the Civil Rights Act of 1964 (Title VII) – (15 or more employees) Cannot discriminate against someone on the basis of race, color, religion, national origin, sex, pregnancy, childbirth, medical condition related to pregnancy, or a person complaining about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Equal Pay Act of 1963 (EPA) - (15 or more employees) This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Age Discrimination in Employment Act of 1967 (ADEA) - (20 or more employees) This law protects people who are 40 or older from discrimination because of age. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Title I of the Americans with Disabilities Act of 1990 (ADA) – (15 or more employees) This law makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

Sections 501 and 505 of the Rehabilitation Act of 1973 - This law makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

The Genetic Information Nondiscrimination Act of 2008 (GINA) - This law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

<u>The Immigration Reform and Control Act of 1986 (IRCA)</u> – (4 or more employees) prohibits discrimination on the basis of national origin by smaller employers. Employers can verify citizenship or naturalization but only after offering employment.

<u>Actions Covered by Employment Laws</u>:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.

Discriminatory practices under these laws also include:

- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities, or based on myths or assumptions about an individual's genetic information; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

<u>Family Medical Leave Act</u> – (50 or more employees) The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:
<u>Twelve workweeks of leave in a 12-month period for</u>:

- the birth of a child and to care for the newborn child within one year of birth;

- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**

Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA): A federal law that prohibits federal contractors and subcontractors from discriminating in employment against protected veterans and requires employers take affirmative action to recruit, hire, promote, and retain these individuals. The VEVRAA regulations require that each contractor is required to develop a written affirmative action program (AAP) also establish a hiring benchmark for protected veterans each year. This benchmark is a tool to help contractors assess the effectiveness of their efforts to recruit and employ protected veterans. (Generally, a comparison is made between veterans in the workforce versus veterans in the company.)

Davis Bacon Act

Davis Bacon Act is a Federal Law that requires employers pay the local prevailing wages on public works projects for laborers and mechanics. It applies to "contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works".

Often states have similar acts covering state contracts or state funded or assisted contracts.

In almost every case the prevailing wages are higher than the minimum wage rates.

Minority or Set Aside Business Programs

Minority Owned Business: A business can be certified as a minority owned business and receive preferential treatment in government contracting and receiving grants.
To qualify as a minority-owned business, a surveying company must be owned and controlled at least 51% by a minority group member (someone who is at least 25% Asian, Black, Hispanic or Native American.)

Women Owned Small Business (WOSB): To **qualify** as **Women-owned**, a **business** must be: Be at least 51% directly **owned** and controlled by one or more **women** who are U.S. Citizens.

Economically Disadvantaged Women-Owned Small Business (EDWOSB): To qualify for EDWOSB the firm must be at least 51 percent directly and unconditionally owned and controlled by one or more women who are citizens (born or naturalized) of the United States and who are economically disadvantaged. The EDWOSB automatically qualifies as a women-owned small business eligible for the WOSB Program.

A woman is presumed economically disadvantaged if the woman has a personal net worth of less than $750,000, her adjusted gross yearly income averaged over the three years preceding the certification does not exceed $350,000, and the fair market value of all her assets (including her primary residence and the value of the business concern) does not exceed $6 million.

Historically Underutilized Business Zones (HUBZone) certified companies: The government limits competition for certain contracts to businesses in historically underutilized business zones. It also gives preferential consideration to those businesses in full and open competition. Joining the HUBZone program makes the business eligible to compete for the program's ***set-aside contracts***. HUBZone-certified businesses also get a 10 percent price evaluation preference in full and open contract competitions. To qualify:

- Be a small business
- Be at least 51 percent owned and controlled by U.S. citizens, a Community Development Corporation, an agricultural cooperative, a Native Hawaiian organization, or an Indian tribe
- Have its principal office located in a HUBZone
- Have at least 35 percent of its employees live in a HUBZone

Disabled Veterans Owned Businesses – To qualify for a disabled veterans owned business, the business must

- Be a small business
- Be at least 51% owned and controlled by one or more service-disabled veterans
- Have one or more service-disabled veterans manage day-to-day operations and also make long-term decisions
- Eligible veterans must have a service-connected disability