

**WEIGEL LAW OFFICE, LLC**  
*Immigration & Nationality Law*

Anthony E. Weigel, Attorney  
E-mail: [tony@weigellawllc.com](mailto:tony@weigellawllc.com)  
Phone: 816.516.6555

---

***To the “New” I-9 Form ... and Beyond!***

The “New” Form

Over the last 30 years, employers have been saddled with the statutory and regulatory burden of completing and retaining *I-9, Employment Eligibility Verification* forms. Although the underlying laws have changed relatively little, the I-9 Form has. The vintage version was a simple, [one-page](#) affair. Oh, how the times have changed.

The U.S. Citizenship and Immigration Services (USCIS) [announced](#) that, as of September 18, 2017, employers may only use the recently released I-9 Form. There are sibling versions of the [I-9 Form](#) (revision date 7/17/17) – the “dumb” one and the “smart” one. The USCIS also updated and substantially re-formatted its useful [Handbook for Employers, M-274 Manual](#). The Manual is functional both as a web-based resource and can be printed in its entirety, either in hard-copy or pdf/soft-copy.

The “dumb” I-9 Form (*Paper Version*) functions much like the 1987 version – one simply prints a copy, completes it, and retains it for the period of employment, plus one year from the date of termination or three years from the date of hire, whichever is later.

The “smart” I-9 Form permits an employee and employer to complete the form online. This version provides helpful drop-down and auto-completion features, as well as links to both the complete and specific, item-by-item instructions. This variation provides an “auto-check” feature to highlight incomplete items. It is important to note that the auto-check will prompt the employee to complete his or her e-mail and phone number in *Section 1*, both of which are **optional entries**. The employee may enter “N/A” in lieu of this information.

Employers should be aware of two ongoing I-9 Form issues and insure compliance with the following items:

- *Section 1* – As a general rule, the employee must complete, sign and date this section. It is possible for another person or persons to assist with this process, either by direct assistance or translating instructions for the employee. The employee must indicate whether or not he she was assisted with the completion of *Section 1*. Additionally, anyone assisting with the completion of this section must provide his or her name, address, and dated signature.
- *Section 2* – The government continues to interpret the law in a manner that requires the employer’s representative to physically review the employee’s document in the presence of the employee. The USCIS’s guidance for remote hire situations is as follows:

*You may designate or contract with someone such as a personnel officer, foreman, agent, or anyone else acting on your behalf, including a notary public, to complete Section 2. Note that anyone else who completes Form I-9 on your behalf must carry out full Form I-9 responsibilities. It is not acceptable for the designated person to physically examine the employee's employment authorization and identity documents, and leave Section 2 for you to complete. You are liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on your behalf. (Section 4.0, M-274 Manual)*

### And Beyond

The USCIS, Immigration and Customs Enforcement (ICE), and the Department of Justice's [Immigrant and Employee Rights Section](#) (IER – formerly known as the Office of Special Counsel for Unfair Immigration-related Practices) continue to engage with employers and individuals by a variety of means, all relaying the message: “We’re with the government, we’re here to help.” There are, without doubt, well-meaning folks who want to help educate employers, but the bottom line remains the same - their job is to enforce the law.

Many of the features and enhancements to both the I-9 Form and [E-Verify](#), such as [E-Verify Self-Check](#), serve to expand the scope of voluntarily provided data, without a subpoena or warrant, to identify and pursue enforcement objectives. For example, [E-Verify's Monitoring and Compliance unit](#) observes its users, conducts data mining, and generates useful enforcement data. Additionally, ICE and USCIS continue to market the invasive [IMAGE Program](#) to employers. The target audience should be skeptical of the government's claim to be its preferred “Workforce Compliance Partner.” Prudent employers should consult with experienced legal counsel before making any determinations to sign up for E-Verify, IMAGE, or other optional I-9 related programs. These types of programs require an employer to voluntarily waive basic legal rights and protections, so these decisions should not be made lightly.

Finally, all employers should realize that, at some point, the government's spotlight on immigration law enforcement will be trained upon them too. There is good money in conducting administrative I-9 audits. There may also be the political will to advance legislation that will mandate enhanced requirements for employers, such as E-Verify registration, and increased penalties for non-compliance. The future is uncertain, but in the interim, employers should focus on developing and maintaining effective I-9 and E-Verify processes and procedures.

*Author:* Anthony E. Weigel, Attorney, [www.weigellawllc.com](http://www.weigellawllc.com)

*Disclaimer:* This information is intended only to provide general information in summary form on legal topics. The contents hereof are not legal advice and should not be relied upon as such. Specific legal advice should be sought in particular matters. The choice of a lawyer is an important decision and should not be based solely upon advertisements.