

PUBLICATION

New I-9 Form: Very Different, Many Quirks, Required for Use by January 22, 2017

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USCIS finally has published the new Form I-9 that has been in the works for a few years and that all U.S. employers will be required to use in onboarding new hires as of January 22, 2017, although they can choose to use it for new hires before then. Employers should start now to prepare themselves for use of this new version, which involves making several practical choices among confusing options and with unpredictable implications.

PDF "Smart Form" vs "Paper Version"

The new "fillable" form, linked on the download page as "Form I-9," is designed to be completed on a computer and in that context it (1) allows the user to click question marks next to every field of information requested to display a significant amount of field-specific guidance about the parameters for information requested; (2) requires the user to complete all fields of a section in order to finish, print, and physically sign; (3) enforces various programmed restrictions on the types of information that can be entered; and (4) uses answers in some fields to automatically enter answers for other fields. Employers using the computer-fillable form are far less likely to leave areas blank or make inconsistent entries than if they use a blank paper form, but it will not ensure error-free completion.

Using the computer fillable form, the employee can complete section 1 alone, the employer representative can complete section 2 alone, or they can both be completed in the same session using the same computer (recommended). The form cannot be partially completed on the computer and then saved.

While well intended for its features, this format will provide some users with maddening experiences in trying to access and download the form. There is something uniquely weird about the form electronic document and its web site setting that makes it tricky to download. Only by navigating to a [special page](#) on "I-9 Central", for instance, can one find some arcane but useful instructions for opening and downloading the form using the Chrome browser. Other users have reported problems downloading from other browser software, especially if the user actually uses the paid Adobe Acrobat Professional to create and manipulate PDF documents as opposed to the mere free Adobe Reader software. USCIS strongly urges users to download the pdf file of the fillable form to their desktops and to open the form from there rather than from the USCIS web site. A user must have the Acrobat Reader software downloaded on his or her computer in order to use the computer-fillable form.

This fillable form should be used only for actually completing the form and printing it to paper for original signatures by the worker and the employer representative. It is NOT a system for creating and storing an "electronic I-9" but rather just a fillable form to be completed on the computer and printed. On the screen the form appears to use four pages, but when completed and then printed, it prints on only three pages: the two pages of the completed form and the final page showing the three lists of documents to choose from.

But if the user only wants to print the form and then fill it out by hand, then this electronic file is not the proper tool. If one tries to print the uncompleted fillable form, it generates errors. USCIS has posted a "Form I-9 Paper Version" containing the empty form for such purpose. Obviously, this version does not provide any of the context-sensitive guidance of the computer-fillable version.

USCIS and users are experiencing various technical difficulties with the web site and form at present, and we expect that USCIS will be updating the form to fix glitches without making specific announcements about each update. We suggest that users download the form again as January 22 approaches and again on January 21 to have the latest version with the fewest errors for future use.

Minor Changes to Form and Instructions, No M-274 Changes Yet

Apart from the computer-assisted features, the substantive changes appear to be only as follows:

- "Other names used" is changed to "Other *last* names used,"
- There is a specific question whether a preparer or translator was used, and a supplemental sheet for multiple preparers or translators is available.
- The instructions, previously the first six pages of the nine-page form collection, now are contained in a separate 15 page document.

USCIS continues to publish the prior form, and it can be used for new hires through January 21, 2017.

The 70-page Handbook for Employers, Form M-274, has not been changed to reflect the new form and its computer-assisted features, but USCIS says it will be updated before January 22, 2017 when the new Form is required to be put into use.

Vendor Systems

By virtue of a 2005 law that allows employers to create and store I-9 forms electronically, and the opportunity to use electronically completed I-9 systems to generate E-Verify queries, some employers use third party vendor systems for these functions. The new form at a minimum requires only small changes to the I-9 form, but it is increasingly clear that ICE and USCIS expect such systems to result in a completed I-9 form that looks exactly like the paper form that USCIS files generate. It is not clear whether and how such third party systems will or must encode the help features that USCIS' computer-assisted form provides.

Legal Issues

While employers can use the "flat" paper form and fill it out by hand, they should anticipate that ICE will expect employers to complete the form as well as they would be expected to using the computer-assisted form, with its various features and contextual help information that are designed to reduce errors.

The January 22 date falls after the inauguration of Donald Trump as President. While it is conceivable that the current Congress or the new President could invalidate the new form before its required effective date, that seems unlikely, given that the form changes are designed to reduce the chances of employment of unauthorized workers.