





physically review the documents. If this is not feasible, then another representative who can review the documents must be selected.

**Q. Are we required to hire a notary public as our authorized representative?**

**A.** When an organization has no authorized representative or agent in the same geographic area as the remote worker, then it has become a common practice for employers to use a notary public to perform this service. After all, the USCIS specifically notes that employers “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.” (See the [USCIS M-274 Handbook for Employers](#), newly revised to reflect the latest revision of Form I-9).

However, not only are you not required to do so, but a notary may not be the best choice.

First, it’s important to understand that the authorized representative serves as an agent of the employer, so if the authorized representative makes a mistake or misrepresentation in verifying documentation or filling out Section 2 of Form I-9, then the employer—not the individual representative—is liable for the mistake.

So it’s in your best interest to ensure that the person reviewing your employees’ documentation and completing Form I-9 is as familiar with the process—and its pitfalls—as you would be if you were completing the form yourself.

Yet, some notaries may be no more familiar with the I-9 process than the average layperson—and many are decidedly *uncomfortable* with the process. For example, are you certain that the notary is familiar enough with the various List A, B, and C documents to reasonably ascertain their validity, even if a document other than a driver’s license or Social Security card is provided? Can you be certain that a notary, when presented with one of the more uncommon, yet acceptable, List A documents, will not ask to see a different form of identification which he or she is familiar?

Though a notary may often be valuable in his or her official status as a trustworthy and impartial party, when serving as your *authorized representative* it’s more important that the notary adequately serve *your* needs—in this case, accurate compliance with the I-9 process.

There is no need to have an I-9 notarized—in fact, notaries specifically should *not* affix their seals to the I-9, as they are *not* acting in their official capacity as notaries public. So there’s no specific incentive to hire a notary for this task. In fact, some states prohibit or restrict notaries from participating in the I-9 process.

For example, California law prohibits notaries from completing immigration documents—including Form I-9—unless the notary is also separately qualified and bonded as an “immigration consultant.” This restriction includes notaries acting in a nonnotarial capacity (e.g., as an authorized representative). ([Cal. Gov. Code Section 8223\(c\)](#)).

In other words, even if I remove my “notary hat” and don’t use my official seal, it’s against the law for me to complete Form I-9 if I’m not an immigration consultant.

Sound confusing? It is. To avoid this confusion, it may simply be easier to seek out an immigration consultant or other nonnotary professional to serve as the agent.



## **Q. Who else can serve as an authorized representative? Can we ask the employee's family member?**

**A.** Though the USCIS does not specifically *prohibit* an employee's family member from serving as an authorized representative, as a practical matter it's not a good idea.

Recall that the authorized representative serves as an agent of the employer, which means the employer is still responsible for the proper completion of the form. If the representative makes a mistake, then the employer is liable.

So, though it may be convenient for an employee's family member to serve as an authorized representative, the family member is not impartial and may even have incentive to lie on behalf of the *employee's* best interests in obtaining employment verification (rather than serving the employer's best interest of having the verification process completed accurately and in good faith.)

With this said, theoretically anyone can be an authorized representative (excepting those California notaries public, as discussed above). An organization is not required to have any formal contract or agreement with a person who serves as an authorized representative, nor is the representative required to have any special training or certification.

However, because the authorized representative is acting as an agent for *you* (the employer), then it is imperative that the representative be someone you can trust to use judgment on behalf of the *employer*. As noted above, it is also a good idea for this person to be someone who is familiar with the I-9 process and document verification.

## **Bottom Line**

If this all seems a bit complicated and confusing, just keep the usual HR rule of thumb in mind—be consistent.

Because of the increase in risk of liability—both in increased fines and enforcement initiatives—employers who regularly hire remote workers should simply ensure that those employees' I-9s are completed with the same level of care that would be taken if the workers were in house.

Depending on your operations, this may mean the use of a third-party I-9 vendor that provides verification services across the U.S., the use of other qualified authorized representatives in your new hires' locations, or arranging for your new hires to come to the company headquarters for a tour, introduction, and onboarding.

## **Related Resources**

- [Immigration Topical Analysis](#)
- [Visas Topical Analysis](#)
- [One Form, Two Form, Here's A New Form: More Details On the New I-9](#)
- [It's Time to Cozy Up to the New I-9](#)
- [Training: Immigration and Hiring—What Supervisors Need to Know](#)



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**For More Information about the I-9 process, contact an**

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