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September 10, 2024

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, California 93009

Subject: Public Hearing Regarding Adoption of an Amendment to the 2023-2026 Memorandum of Agreement Between the County of Ventura and the Criminal Justice Attorneys' Association of Ventura County

Recommendations

It is recommended that your Board:

1. Commence a public hearing on adoption of an amendment to the 2023 – 2026 Memorandum of Agreement (MOA) between the County of Ventura (County) and the Criminal Justice Attorneys' Association of Ventura County (CJAAVC); and,
2. Set a second public hearing on September 24, 2024, as required by Article 20, Section 2006(B), of the Personnel Rules and Regulations, and adopt the proposed MOA at the conclusion of the hearing.

Fiscal/Mandates Impact

Mandatory:	No
Source of Funding:	Various
Funding Match Required:	No
Impact on Other Departments:	None

Summary of Fiscal Impact:

	<u>FY 2024-25</u>
Total Cost	\$0

Strategic Priority

This agenda item supports the County's strategic priority to attract, hire, develop, and retain a diverse workforce empowered to meet the needs of our customers.

Discussion

The County has a paid leave redemption plan provision in most of the County labor agreements and also the Management Resolution. The paid leave redemption plan

permits employees to redeem previously accrued and unused vacation or annual leave for cash. The Internal Revenue Code, and its implementing IRS regulations, state that when an employee has the right, without substantial restriction, to convert accrued vacation or annual leave into cash, the number of accrued hours that could have been converted to cash, even if the employee chose not to, is considered income and creates tax obligations. This is known as “constructive receipt” of income. When constructive receipt occurs, the County is obligated to withhold taxes on such constructively received income or potentially be liable for: a) payment of taxes that should have been withheld; and 2) penalties for taxes not withheld.

In 2016, the County informed all employee unions of the tax consequences of constructive receipt of income flowing from employee leave redemption plans. The County commenced bargaining with the unions to avoid constructive receipt to revise their respective leave redemption plans to include two restrictions: 1) submission of irrevocable elections to receive cash instead of leave prior to the beginning of the calendar/taxable year in which the leave will be cashed out; and 2) a provision that cashed out leave must be accrued in the same year it is cashed out.

The County bargained with CJAAVC over the annual leave redemption provisions of the MOA for several years. During that time, CJAAVC filed an unfair labor practice charge with the Public Employment Relations Board (PERB), alleging the County had failed to bargain with them over the decision to withhold taxes on the number of accrued hours that could have been converted to cash. PERB decided the County was not obligated to bargain the decision to withhold taxes for employees found to be in constructive receipt. However, PERB also found that the County had failed to bargain in good faith over the effects of its decision to withhold taxes on constructively received income. The County disagreed with that decision, but was nevertheless ordered to:

1. Continue to engage in effects bargaining with CJAAVC over its decision to withhold taxes on constructively received income; and,
2. Compensate CJAAVC members for any professional tax preparer/advisor fees incurred due to the County’s decision to implement constructive receipt income tax withholding.

With regard to item 1 of PERB’s order, the only effect identified by CJAAVC concerned the use of annual leave hours that had already been taxed as a result of constructive receipt but not cashed out. For employees covered by the CJAAVC MOA, the rate for which the hours are paid out are calculated at what is referred to as a “gross-up” rate. The “gross-up” rate, per Section 1210 of the MOA, includes base pay and several other forms of cash compensation. Therefore, when employees are found to be in constructive receipt, they are taxed on the potential earnings of their respective “gross-up” rate, not just base pay.

When an employee is taxed on their annual leave hours due to constructive receipt, that employee is "credited" in the following tax year(s) with the equivalent number of annual leave hours taxed as a result of constructive receipt in prior years, and when that annual leave is used or cashed out, it is not subject to further federal or state income tax or withholding ("tax-free"). However, when the employee used the "credited" leave to cover an absence, it is credited to the employee on an hour-for-hour basis, tax-free, at their base rate of pay at the time the taxes were reported and withheld and not at their gross-up rate.

The parties bargained over this specific effect and, on August 13, 2024, they reached a tentative agreement on an amendment to the MOA. (Exhibit 1) The main provision of the amendment is that effective with the 2023 tax period, employees covered by this agreement who were found to be in constructive receipt of income shall continue to be "credited" the equivalent number of hours of annual leave, tax-free. When the employee uses the credited leave to cover an absence, it will be paid at the employee's base wage rate. However, for the purposes of taxation, the hours shall be credited tax free to the employee on an hour-for-hour basis at their "gross-up" wage rate.

For example, the base wage of an employee covered by Sections 1205 A or B is \$20/hour and the employee's "gross-up" wage is \$25/hour. The employee was eligible to redeem annual leave hours for cash, but did not cash out 100 hours. As a result, the employee was determined by the County to be in constructive receipt of income and had the equivalent of 100 hours of annual leave at the grossed-up value reported as income and taxes withheld on that income.

Thereafter, the employee is regularly scheduled to work 80 hours in a pay period and the employee's base earnings per pay period are \$1,600 (80 hours x \$20/hour). In one pay period, the employee used 16 hours of annual leave to cover an absence. The employee would receive their base wage for the vacation hours used (16 hours x \$20/hour for \$320). While the employee's gross paycheck does not change (\$1,600), the tax-free "credit" would be calculated and applied at the "gross-up" rate (16 hours x \$25/hour for \$400) rather than the base rate.

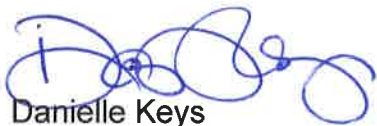
In the event the total "tax-free" credit in an employee's paycheck surpasses the taxable income available in an employee's paycheck, the remaining credit shall be applied to the following paycheck.

Additionally, the parties agreed to extend PERB's order to compensate CJAACV members for any professional tax preparer/advisor fees incurred due to the County's decision to implement constructive receipt income tax withholding through the expiration date of the current MOA, however, any requests received for reimbursement by the County after your Board's adoption of this amendment will not incur interest, as currently required under the PERB order.

It is of note that the County has, to date, received no requests for reimbursement from employees covered by the MOA, which is the basis for the \$0 cost associated with the amendment. Should any request for reimbursement be received, the costs will be de minimis.

This letter has been reviewed by the County Executive Office, the Auditor-Controller's Office, the Ventura County Civil Service Commission, and County Counsel. If you have any questions regarding this item, please contact me at (805) 654-2561.

Respectfully submitted,



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County Human Resources Director/Labor Relations



Sevet Johnson, PsyD
County Executive Officer

c: Jeffery S. Burgh, Auditor-Controller
Tiffany N. North, County Counsel
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Scott Powers, County Chief Financial Officer
Criminal Justice Attorneys' Association of Ventura County

Attachments:

- Exhibit 1 – CJAAVC 2023–2026 MOA Amendment
- Exhibit 2 – Civil Service Commission Statement