

County of Ventura
Leave Redemption Proposal
Criminal Justice Attorneys Association of Ventura County
March 2, 2021

ARTICLE 12
PAID LEAVE

Sec. 1205 ANNUAL LEAVE REDEMPTION:

Revise as follows:

- A. Employees hired and covered by this Agreement before May 22, 2005:
~~Upon using minimum of eighty (80) hours of annual leave during the past twelve (12) months, a~~ An employee may request elect to receive pay in lieu of up to one hundred sixty (160) hours or two hundred (200) hours for those with 10,400 hours of continuous County service, per calendar year of annual leave accrual at total compensation as prescribed in Section 12110 of this Agreement. ~~A request for redemption shall not be made more than twice per calendar year and t~~ The total amount redeemed in a calendar year shall not in total exceed the aforementioned maximums respectively.
- B. Employees hired on or after May 22, 2005, but before September 23, 2014:
~~Upon using a minimum of eighty (80) hours of annual leave during the past twelve (12) months, a~~ An employee may request elect to receive pay in lieu of up to one hundred sixty (160) hours per calendar year of annual leave accrual at the level of compensation prescribed in Section 1210 of this Agreement. ~~A request for redemption shall not be made more than twice per calendar year and t~~ The total amount redeemed in a calendar year shall not in total exceed the aforementioned maximum.
- C. Employees hired on or after commencement of this 2014-2017 MOA September 23, 2014: Upon using a minimum of eighty (80) hours of annual leave in the prior twelve (12) months, ~~a~~ An employee may request to receive pay in lieu of up to one hundred (100) hours of annual leave accrual at the current base rate of pay. ~~A request for redemption shall not be made more than twice per twelve (12)-month period immediately preceding the request.~~ The total of annual leave accrual amount redeemed in a twelve (12)-month period calendar year shall not, in total, exceed the aforementioned maximum. This pay is to be calculated on only the bi-weekly base, "regular" salary of the employee, exclusive of any additional/extra bonus, premium, incentive, or other element of compensation/remuneration.
- D. The irrevocable election for annual leave redemption for any of the payments described in (A) or (B) OR (C) of this section shall be subject to the following conditions:
1. Any employee wishing to receive cash in lieu of annual leave hours must submit an irrevocable written election by December 31 of the calendar year prior to the calendar year in which the employee wishes to redeem annual leave hours for cash.

Employees who are eligible for annual leave redemption and do not make an affirmative election by the end of the calendar year shall be deemed to have irrevocably elected not to redeem annual leave for pay in the subsequent calendar year.

Any employee who irrevocably elects not to redeem annual leave for pay in a subsequent calendar year will not be eligible to redeem annual leave for pay for that calendar year and will not be subject to any County reporting of constructively received income or taxation regarding such annual leave waived.

An employee who affirmatively elects to redeem less than the full amount they are allowed to redeem in a calendar year under (A), (B), or (C) of this section, will not be eligible to redeem the remaining hours of leave for pay in that calendar year and will not be subject to any County reporting of constructively received income or taxation regarding such annual leave waived.

2. After a qualified election is made, employees may request cash-out payments during the calendar year for which the election was made by submitting requests for payment in the ordinary payroll process. An employee may make up to four (4) requests per calendar year for payment in lieu of their combined annual maximum (described in (A) (B) or (C) of this section) or the amount indicated by the employee on their written irrevocable election, whichever is less. Only annual leave hours already accrued in the calendar year for which an election is made may be cashed out. Cash-outs for annual leave hours accrued in a prior calendar year are not allowed.
3. An employee must use eighty (80) hours of accrued annual leave during the twelve (12) months immediately preceding a cash-out payment request. For this purpose, "use" shall mean actually taking time off work and being paid annual leave pay for such time off. If the employee has not used the required eighty (80) hours in the twelve (12) months immediately preceding the cash-out, the employee's cash-out request shall be denied. If an employee is unable to cash-out by the final payroll processing period of the year because the employee has not used the required eighty (80) hours in the preceding twelve (12) months, the employee shall, for tax purposes, be considered to have had the unlimited right to cash out the amount of accrued annual leave the employee had elected to redeem for cash.

If an employee is unable meet the eighty (80) hour usage requirement necessary to cash-out annual leave by the end of the election year as a result of the denial of a written request (or requests) to use annual leave, the employee's election shall be deemed null and void, no cash-out shall be allowed, and the employee shall not have taxes reported or withheld on the value of the annual leave hours that the employee had been eligible to receive. in order to request that an election be deemed null and void, the sum total of both the hours requested in the denials and actual annual leave hours utilized by the employee in the election year must equal at minimum 80 hours. It is the responsibility of the employee to submit the written denials to the Auditor-Controller's Office at the time the request is made to void the election.

4. If an employee fails to request payment for the total annual leave hours elected for cash-out, the employer shall unilaterally cash out the elected annual leave hours to the extent that an employee has accrued leave available on the last pay period of the calendar year.

An employee who has elected to receive pay in lieu of annual leave and who does not have sufficient hours in their annual leave bank to fulfill their cash out obligations after they have been unilaterally cashed out ~~by the employer~~ pursuant to this subsection shall, for tax purposes, be considered to have had the unlimited right to cash out the amount of annual leave specified in the employee's irrevocable election to redeem, less the total amount of any annual leave hours actually redeemed for pay and unilaterally cashed out in the applicable calendar year.

For example, an employee elects to cash out 200 hours of annual leave, but only redeems a total of 150 hours of annual leave for pay during the year. At the end of the calendar year, the difference in hours between the employee's redemption election and what was actually redeemed shall be unilaterally cashed out. However, if the employee does not have sufficient hours in their annual leave bank to fulfill their redemption obligations, that employee shall, for tax purposes, be considered to have had the unlimited right to cash out 200 hours, less the total number of annual leave hours redeemed during the calendar year plus the amount unilaterally cashed out by the employer.

5. Annual leave hours used for paid time off will be deducted first from annual leave hours accrued in prior calendar years, and last from annual leave hours accrued in the current calendar year.
6. Employees who experience an unforeseeable emergency may be permitted to make a new irrevocable election and redeem annual leave hours for cash (or to increase the amount of a previous election) during the calendar year in which the unforeseeable emergency occurs. For these purposes, "unforeseeable emergency" means a severe financial hardship to the employee resulting from an illness or accident of the employee, the employee's spouse, or a dependent of the employee, loss of the employee's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The amount of such new election (or increase in a prior election) shall be limited to the amount necessary to satisfy the unforeseeable emergency plus an amount necessary to pay taxes reasonably anticipated as a result of the cash-out, after taking into account the extent to which the hardship is or maybe relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the employee's assets (to the extent the liquidation of the employee's assets would not itself cause severe financial hardship). Whether an occurrence is an unforeseeable emergency shall be determined by the Auditor-Controller's Office in its sole discretion.
7. The Human Resources Division and Auditor-Controller's Office shall develop forms and procedures for implementation of this program.

E. Additional Provisions:

1. If it is subsequently determined by the County, the Internal Revenue Service (through a PLR or any other action), a court of competent jurisdiction or another governing authority that the leave redemption provisions in the 2017-2020 MOA between the parties (Exhibit X) will not trigger constructive receipt of income from accrued leave, CJAAVC may, at its sole option, compel the County to restore the leave redemption provisions of the 2017-2020 MOA.
2. If it is subsequently determined by the County, the Internal Revenue Service (through a PLR or any other action), a court of competent jurisdiction or another governing authority that the leave redemption provisions in the 2017-2020 MOA between the parties (Exhibit X) triggered constructive receipt of income but that constructive receipt could be avoided by the use of an irrevocable election (without the restriction that only annual leave hours already accrued in the calendar year for which the election was made may be redeemed), CJAAVC may, at its sole option, compel the County to meet and confer for the purpose of revising, consistent with such determination, the previous Annual Leave Redemption provisions of Exhibit X to avoid constructive receipt. Once adopted by the Board of Supervisors, the revised provisions of Exhibit X will then supersede the current provisions of this section.
3. If it is subsequently determined by the County, the Internal Revenue Service (through a PLR or any other action), a court of competent jurisdiction or another governing authority that the leave redemption provisions in the 2017-2020 MOA between the parties (Exhibit X) triggered constructive receipt of income but that constructive receipt could be avoided by the restriction that only annual leave hours already accrued in the calendar year of redemption may be redeemed (without the requirement that an irrevocable election be submitted in the prior year), CJAAVC may, at its sole option, compel the County to meet and confer for the purpose of revising, consistent with such determination, the previous Annual Leave Redemption provisions of Exhibit X to avoid constructive receipt. Once adopted by the Board of Supervisors, the revised provisions of Exhibit X will then supersede the current provisions of this section.