

**AMENDMENT TO THE MEMORANDUM OF
AGREEMENT BETWEEN THE COUNTY OF VENTURA AND
THE CRIMINAL JUSTICE ATTORNEYS' ASSOCIATION OF
VENTURA COUNTY**

There is presently in full force and effect a Memorandum of Agreement ("MOA") between the County of Ventura ("County") and the Criminal Justice Attorneys' Association of Ventura County ("CJAAVC") that sets forth the terms and conditions of employment of all County employees represented by CJAAVC for the period between October 21, 2023 and October 20, 2026.

The County and the CJAAVC agree to amend Article 12 - Paid Leave of the 2023-2026 MOA as follows:

Add New Section: Sec. 1213 - Constructive Receipt Taxation

- A. Under section 1205 of the MOA between the County and CJAAVC, employees are eligible to annually redeem a defined number of their accrued annual leave hours for cash. Depending on an employee's date of hire, these hours are redeemed at either a "gross-up rate," which includes base rate of pay plus several additional premiums as defined by section 1210 of the MOA, or the employee's base rate of pay.

Based on the County's interpretation of the Internal Revenue Code and its implementing regulations, the County contends that employees covered by this MOA who are eligible for, but do not redeem the full allotted benefit under section 1205 in a calendar year, are in constructive receipt of income for the cash value of any amount of leave the employee could have redeemed but did not. As a result, the effected employees are deemed to have earned the income, at the applicable "gross-up" or base rate of pay, on the leave that the employee could have redeemed in the calendar year. The County then reports that amount as income and taxes are withheld on that income.

For example, an employee covered by section 1205 B, whose base wage is \$20/ hour and whose "gross-up" wage is \$25/hour is eligible to cash out 160 hours of annual leave during the calendar year, but only cashed out 40 hours. As a result, the employee would be taxed as if they had constructively received the "gross-up" cash value of 120 hours of annual leave at the rate of \$25/hour, or \$3,000. The \$3,000 would not then be actually paid to the employee, but would be reported as income and corresponding taxes withheld by the County.

Commencing with the County's application of "constructive receipt" in or about November 2017 and prior to the adoption of this section, when an employee was determined to have been in constructive receipt of income and has that income reported and taxes withheld for the reasons described above, that employee was "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 was used or cashed out, it was not subject to further federal or state income tax or withholding ("tax-free"). When the employee used the "credited" leave to cover an absence, it was 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 their gross-up rate.

For example, the base wage of an employee covered by section 1205 A or B is

\$20/hour and the employee's "gross-up" wage is \$25/hour. The employee failed to redeem 100 of the hours that the employee was eligible to redeem and was subsequently determined by the County to be in constructive receipt of income. As a result, the County reported this amount (valued as \$2,500.00) as income and withheld taxes as if the employee had received the grossed-up cash value of 100 hours of annual leave that was not redeemed for cash. In the subsequent year, the employee used 16 hours of annual leave to cover an absence. Prior to adoption of this Section, and under the County's application of the IRS constructive receipt of income principle, the County paid those 16 hours to the employee, tax-free, at the employee's base wage of \$20/hour, or \$320. (If the employee's base rate has increased since the constructive receipt income was recognized, then taxes are assessed on the difference.)

However, applying the constructive receipt principle in conjunction with Section 1205 and Section 1210 of the MOA, when an employee redeems the "credited" leave as part of an annual leave buydown, pursuant to section 1205 of this MOA, it should be redeemed, tax-free, at the gross-up rate.

For example, assume that the base wage of an employee covered by section 1205 A or B is \$20/hour and the employee's "gross-up" wage is \$25/hour. Also assume that - the employee failed to redeem 100 of the hours that the employee was eligible to redeem and was subsequently determined by the County to be in constructive receipt of income. As a result, the County reports this amount as income and withholds taxes as if the employee had received the grossed-up cash value of 100 hours of annual leave that was not redeemed for cash. In the subsequent year, the employee used 80 hours of annual leave for vacation, paid at the regular rate, as delineated above. In the event the employee redeems 20 hours of annual leave, pursuant to section 1205 of this MOA, the County should pay- those 20 hours at the gross-up rate of \$25/hour, or \$500.

- B Effective 2023, employees covered by either section 1205 A or B of this MOA who were, or will be, determined by the County to be in constructive receipt of income and are taxed at the gross-up cash value of leave hours that were not redeemed for cash in calendar years commencing 2023, 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 section 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.

For example, the base wage of an employee covered by section 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 rate reported as income and had 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 80 hours of annual leave. The employee would receive their base wage for the vacation hours used (80 hours x \$20/hour for \$1,600). The employee's gross paycheck does not change (\$1,600); however, the tax-free "credit" would be calculated and applied at the gross-up rate (80 hours x \$25/hour for \$2,000) and would exceed the full value of the paycheck. Because the tax-free credit is \$400 more than the actual paycheck itself (\$2,000 - \$1,600), the remaining \$400 tax-free credit will be applied to the following paycheck, even if no additional leave is used during that pay period.

- C. Employees covered by section 1205 C of this MOA shall continue to have their previously taxed leave credited toward their use of that leave on an hour for hour basis, tax-free, at their base rate of pay as set forth in subsection A of this section.
- D. Effective 2023, the value of the previously taxed annual leave hours that were not redeemed for cash in calendar years commencing 2023, shall be credited as "tax-free", will be applied toward annual leave hours as they are first used, whether for paid time off or for the purpose of annual leave redemption.
- E. The value of previously taxed and unused annual leave hours credited as "tax-free" shall be rolled over from one tax year to the next.
- F. Upon separation of employment, bargaining unit members subject to paragraph B of this section shall have such "tax-free" credits applied on an hour for hour basis to all available leave hours being cashed out in accordance with Section 1209 of this agreement, up to the total amount of "tax-free" credits available or the total number of eligible leave hours being cashed out upon separation, whichever comes first.
- G. The foregoing provisions in Section 1213 were reached by the parties through the bargaining process during a continuing dispute between the County and the CJVACC regarding the County's interpretation of the IRS constructive receipt of income principle as applied to the Annual Leave provisions in this MOA. Notwithstanding the implementation of this Section 1213 or any implementation by the County of Section 1205 (which was imposed by the Board of Supervisors on September 26, 2023), the CJAACV does not waive its continuing legal contention that Annual Leave Redemption should not be subject to tax rules governing constructive receipt of income, and reserves all legal

rights thereto.

- H. Consistent with the Public Employee Relations Board's (PERB) Decision No.2758-M, Order-Section B3 in Case Numbers LA-CE-1260-M and LA-CE-1268-M, the County shall continue to reimburse CJAAVC represented employees for any accountancy and/or related professional fees incurred in relation to the County's implementation of its constructive receipt tax withholding decision for the tax years 2020 through 2022 (upon the adoption of this Section 1213 by the Board of Supervisors and until the expiration of the 2023-2026 MOA). Furthermore, after the date of adoption of this Section 1213 by the Board of Supervisors, compensation for the above-reference accountancy and/or related professional fees shall not be augmented by any interest.


The County and CJAAVC agree to the foregoing on this thirteenth day of August 2024.

For CJAAVC:



John Barrick
CJAAVC President

For the County:



Mike Curnow
Labor Relations