

## **CJAAVC Leave Redemption Plan**

**Effective September 26, 2023, the following shall supersede the provisions of Section 1205, "Annual Leave Redemption," of the 2021-2023 Memorandum of Agreement between the County of Ventura and the Criminal Justice Attorney's Association of Ventura County (CJAAVC), commencing with the 2024 calendar year:**

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- A. Employees hired and covered by this Agreement before May 22, 2005: An employee may elect to receive pay in lieu of up to two hundred (200) hours per calendar year of annual leave accrual at total compensation as prescribed in Section 1210 of this Agreement. 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: An employee may 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. The total amount redeemed in a calendar year shall not in total exceed the aforementioned maximum.
- C. Employees hired on or after September 23, 2014: 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. The total of annual leave accrual amount redeemed in a 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 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 2) 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 2) 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 2 to avoid constructive receipt. Once adopted by the Board of Supervisors, the revised provisions of Exhibit 2 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 2) 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 2 to avoid constructive receipt. Once adopted by the Board of Supervisors, the revised provisions of Exhibit 2 will then supersede the current provisions of this section.



# COUNTY of VENTURA

## COUNTY EXECUTIVE OFFICE

**Exhibit 1**

**Sevet Johnson, PsyD**  
County Executive Officer

**Mike Pettit**  
Assistant County Executive Officer

**Kaye Mand**  
County Chief Financial Officer

**Shawn Atin**  
Assistant County Executive  
Officer/  
Human Resources Director  
Labor Relations

September 26, 2023

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

**Subject: Public Hearing Regarding Impasse With the Criminal Justice Attorneys' Association of Ventura County Concerning Annual Leave Redemption and Implementation of the County of Ventura's Last, Best and Final Offer.**

### Recommendations

It is recommended that your Board:

1. Commence a public hearing regarding the impasse with the Criminal Justice Attorneys' Association of Ventura County (CJAAVC) concerning annual leave redemption and, at the conclusion of the hearing, implement the County's Last, Best, and Final Offer regarding the provisions by which employees represented by CJAAVC may redeem annual leave.

### Fiscal/Mandates Impact

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

Summary of Fiscal Impact:

	<u>FY 2023-24</u>
Total Cost	\$0

### Discussion

In 2016, outside tax counsel advised that the County's leave redemption plans, under which employees could redeem previously accrued vacation or annual leave for cash,

created the circumstances for constructive receipt of income. Specifically, under the Internal Revenue Code and its implementing IRS regulations, when an individual has the right, without substantial restriction, to convert accrued vacation or annual leave into cash, the amount that could have been converted to cash, even if the individual chose not to, is considered income and creates tax obligations. 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 b) penalties for taxes not withheld.

At that time, the County informed all employee unions of the tax consequences of constructive receipt of income flowing from employee leave redemption plans and advised the unions that constructive receipt could be avoided by revising their leave redemption plans to include two restrictions: 1) irrevocable elections to receive cash instead of leave made 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.

By early 2018, all unions, with the exception of two (including CJAAVC), agreed to revise their leave redemption plan provisions. This caused significant administrative burden for the Auditor-Controller's Office (ACO), as all CJAAVC members are eligible to cash out leave and the reporting/withholding of constructively received income must be done manually by ACO staff. Moreover, CJAAVC's refusal to agree to the two restrictions means that the only way for its represented employees to avoid the tax consequences of constructive receipt is to cash out the maximum amount of leave available every year.

The County continued bargaining with CJAAVC until 2021 over both the County's proposals to amend the provisions of CJAAVC's leave redemption plan to minimize the risk of creating constructively received income and the financial effects of the County's decision to withhold taxes on any constructively received income. During this time, CJAAVC filed an unfair labor practice charge with the Public Employment Relations Board (PERB), alleging the County had failed to bargain with them. 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. *(To date, the County has received no submissions for constructive receipt losses from CJAAVC members.)*

Bargaining continued through March 2021, when the County provided its Last, Best, and Final Offer (LBFO) concerning amendments to CJAAVC's annual leave redemption plan

designed to minimize the potential for constructively received income. A copy of the LBFO has been provided as Exhibit 1. At that point, after almost five years of bargaining, the parties had reached impasse. Normally, bargaining over meet and confer matters would not be as protracted as was the instant case; however, it was the desire of the parties to reach agreement and avoid impasse procedures. Under the County's LBFO, CJAAVC's leave redemption plan would be amended to, among other things, require that employees submit an irrevocable election to cash out leave by December 31 of the year preceding the year in which the leave is to be cashed out, and limits leave to be cashed out to leave that is accrued in the year of the cash-out (i.e., leave accrued in prior years could not be cashed out). At CJAAVC's request, the parties engaged in mediation, without reaching resolution. CJAAVC subsequently requested Factfinding.

In June 2023, the parties met with a Factfinder.

The Factfinder's Initial Recommendation would have obligated the County to purposefully fail to withhold and report taxes on constructively received income for two groups of CJAAVC employees. Because it would have required violation of tax obligations, the County dissented from the Initial Recommendation.

On August 9, 2023, the Factfinder issued a Final Recommendation that recommended:

1. Employees eligible to annually cash out 100 hours of leave should fall under the County's LBFO;
2. Employees eligible to annually cash out 160 hours of leave should be grandfathered under the current leave redemption provisions until January 1, 2025, to give those unit members time to adhere to the LBFO.
3. Employees eligible to annually cash out 200 hours of leave should be grandfathered under the current leave redemption provisions until separation from County employment.

The factfinding recommendation is advisory only. The only requirement is for the parties to consider whether it provides a basis for settlement. Notably, the recommendation acknowledges the appropriateness of the County's proposal by recommending that it be ultimately adopted for the majority of CJAAVC's represented employees. However, the recommendation is inherently flawed in its suggestion that the County continue to apply the current leave redemption provisions for longer tenured employees because it would retain the constructive receipt issues and the corresponding administrative burdens on the ACO. A copy of the Factfinder's recommendation has been included as Exhibit 2.

At this time, your Board may either take no action, leaving CJAAVC's leave redemption plan in the status quo, or implement the County's LBFO. We recommend that the County's LBFO be implemented to include the two essential restrictions discussed above. This will allow CJAAVC members who do not wish to redeem leave in a given year, or who wish to redeem less than the maximum amount, with the option to avoid the tax consequences



created by CJAAVC's current leave redemption plan. Implementing the LBFO will also reduce the burden on the ACO, whose staff is required to implement the withholding changes. Adopting the LBFO will also bring CJAAVC into alignment with all but one of the other employee associations.

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,



Shawn Atin  
Assistant County Executive Officer/Human Resources Director



Sevet Johnson, PsyD  
County Executive Officer

c: Jeffery S. Burgh, Auditor-Controller  
Tiffany N. North, County Counsel  
Mike Pettit, Assistant County Executive Officer  
Kaye Mand, Assistant County Executive Officer/Chief Financial Officer  
Criminal Justice Attorneys' Association of Ventura County

Attachments:

- Exhibit 1 – Leave Redemption Proposal (LBFO) dated March 2, 2021
- Exhibit 2 – Factfinder's Recommendation
- Exhibit 3 – Civil Service Commission Letter

# MEMORANDUM OF AGREEMENT

Between the  
County of Ventura



and the  
Criminal Justice Attorneys'  
Association of Ventura County  
(CJAAVC)

2017-2020



- Sec. 1203 ANNUAL USAGE: During the first twenty-six (26) pay periods of employment, employees shall use no less than forty (40) hours of annual leave; and thereafter employees shall use no less than eighty (80) hours of annual leave in each succeeding twenty-six (26) pay periods of employment. Under no circumstances shall any annual leave benefits be forfeited. Nor shall any employee be ordered to use earned annual leave benefits at a time not desired by him. While on annual leave or sick leave an employee shall be compensated and receive benefits at the same rate as if he were on the job. In the event of an extreme workload, which severely decreases the employee's ability to meet these requirements, this section may be modified, based on Department Head approval, by reducing the amount of annual leave required to be used.
- Sec. 1204 MAXIMUM ACCRUAL: Effective July 2, 2006, the maximum number of hours that an employee can accumulate shall be 880 hours. Notwithstanding the above, any employee with more than 880 hours of accumulated leave as of the effective date of this Agreement may maintain up to 1040 hours of accumulated annual leave until July 1, 2007, at which time the 880 hour cap shall apply. An employee shall not be entitled to earn and accrue any annual leave hours in excess of the maximum limitations described above, except when within six months prior to reaching the cap a reasonable request to use annual leave benefits has been denied, in which case the employee's leave accrual may exceed the cap, by the number of hours denied for a period of eighteen (18) months.
- Sec. 1205 ANNUAL LEAVE REDEMPTION:
- A. Employees hired and covered by this Agreement before May 22, 2005: Upon using a minimum of eighty (80) hours of annual leave during the past twelve (12) months, an employee may request to receive pay in lieu of up to one hundred sixty (160) hours, 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 1211 of this Agreement. A request for redemption shall not be made more than twice per calendar year and 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: Upon using a minimum of eighty (80) hours of annual leave during the past twelve (12) months, an employee may request 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 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: Upon using a minimum of eighty (80) hours of annual leave in the prior twelve (12) months, 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 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.

Sec. 1206 ADVANCED ANNUAL LEAVE CREDIT: New regular, full time employees shall receive advanced annual leave credits equaling seven (7) biweekly pay periods of annual leave accrual as of their date of hire. Because of this advance, these employees will not earn or accrue annual leave benefits during the first seven (7) biweekly pay periods of employment. If an employee to whom annual leave credits have been advanced should separate from employment prior to having completed seven (7) biweekly pay periods of service, those annual leave benefits then credited to his account which exceed what would have been earned during the employee's actual service but for the advance shall not be subject to the payment pursuant to Section 1209; and the employee's final pay check shall be reduced by the value of any hours previously used that exceeded those that would have been earned but for the advance.

Sec. 1207 PRIOR SICK LEAVE ACCRUALS:

- A. Current sick leave balances shall be frozen as of August 7, 1977. Sick leave may be used until the sick leave balance is exhausted. Payment for unused sick leave will be made.

Upon retirement or termination, except for cause, after 20,800 hours of continuous County service - 25%

- B. Employees requesting time off for illness or injury may use accumulated sick leave prior to using annual leave.