

COUNTY OF VENTURA
OFFICE OF THE AUDITOR-CONTROLLER

Number 4.52 Rev. 1

ADMINISTRATIVE
POLICY AND PROCEDURES

Date January 3, 2017

SUBJECT: OFFICE PROCEDURES

Supersedes December 12, 2016

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DIVISION RESPONSIBLE: GENERAL
ACCOUNTING, PAYROLL SERVICES

Title: CASH IN LIEU OF LEAVE HOURS

Approved:



/S/

PURPOSE:

To define policies and procedures governing the Auditor-Controller's "Cash In Lieu of Leave Hours" program to conform to Treasury Regulations § 1.451-2(a), Constructive Receipt.

POLICY:

As a general rule, compensation is included in an employee's gross income in the year it is received, whether actually received or constructively received. When an employee receives his or her biweekly pay, that income is actually received. When compensation is credited to an employee's account or otherwise made available so that the employee could have drawn upon it during the taxable year if notice of intention to withdraw had been given, that income is constructively received. This is true even if the employee never actually withdraws the funds. However, income is not constructively received if the employee's control of its receipt is subject to substantial limitations or restrictions. (Treas. Reg. § 1.451-2(a).)

Memoranda of Agreement with employee unions (MOAs) and the Management, Confidential Clerical and Other Unrepresented Employees' Resolution (Management Resolution) give some employees the option to redeem (i.e., cash-out) specified amounts of accrued vacation leave (or analogous types of leave) subject to certain conditions. If these conditions are determined not to be "substantial limitations and restrictions" on employee control over the cash-out of leave hours, employees who had the option to cash out leave would be subject to taxation under the constructive receipt rule even when they had not, in actuality, cashed out leave. To avoid this risk, the County has established a leave cash-out program modeled on plans approved by the Internal Revenue Service in private letter rulings. The County's program contains two key limitations on the option to cash-out leave: (1) the employee must make an irrevocable election to cash-out leave in the calendar year preceding the year in which the leave is cashed out, and (2) only leave accrued during the year in which leave is cashed out may be cashed out.

The Management Resolution has been amended to incorporate this new program. Similar programs may be included in Collectively Bargained Agreements (CBA). Employees covered by CBAs that do not incorporate the principals of this program may be subject to taxation under the constructive receipt rule.

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ELIGIBILITY:

Requirements for obtaining eligibility to receive cash in lieu of vacation hours (or analogous leave) are set forth in each employees MOA or the Management Resolution, and may include, but are not limited to:

- A. The employee's hire date and type of employment.
- B. The employee's position classification.
- C. The number of cumulative service hours earned.
- D. The rate of accrual.
- E. The number of hours banked prior to or remaining immediately following a request to receive cash in lieu of leave.
- F. Financial hardship.
- G. Retirement from County service.

ELECTION PROCESS:

As to employees covered by the Management Resolution or MOAs that adopt the County's policy, of Constructive Receipt the following conditions shall apply:

1. General Rule
 - A. To cash out leave, an employee must make an irrevocable election to cash out leave in the calendar year preceding the taxable calendar year in which the leave is to be cashed out.
 - B. Elections will be processed each calendar year during the Benefits Open Enrollment period for employees hired prior to that open enrollment period (October-November) during which time an employee will have the opportunity to make an irrevocable election of cash in lieu of leave hours for hours scheduled to accrue in the next taxable calendar year.
 - C. Only leave accrued during the taxable calendar year in which leave is cashed out may be cashed out. An employee may not cash out leave accrued during a prior taxable year. *(Note: MOA exceptions may apply).*
 - D. All elections must be received and recorded by the Auditor-Controller's Office on or before December 31 of the calendar year preceding the taxable calendar year accrual and cash out period (taxable pay periods between January 1 and December 31).
 - E. Employees hired after the Benefits Open Enrollment period shall not be eligible to elect a purchase until the next calendar year Benefits Open Enrollment period.
 - F. Employees expecting to become eligible during the taxable calendar year due to a MOA cumulative service hours requirement may elect during Open Enrollment to purchase cash in lieu of leave for the subsequent taxable calendar year.
 - G. Employees who do not make an election during the open enrollment period that experience hardship as defined by their MOA may be allowed to make an irrevocable election to cash out leave while in the taxable accrual period.

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- H. Certain MOAs contain provisions that allow employees to receive cash in lieu of leave under special circumstances. The employee should refer to their MOA for additional information and guidance.

As to employees covered by MOAs that do not adopt the County's policy of Constructive Receipt, the following conditions shall apply:

- A. Existing MOA leave redemption provisions will be honored.
- B. Employees who are members of MOAs that do not adopt this policy will not be allowed to submit an irrevocable election form.
- C. For employees eligible to receive cash in lieu of leave in the taxable calendar year pursuant to CBA provisions, who chose not to receive cash in lieu of leave and, instead, carry over accrued leave, the following will occur:
 - I. The Auditor-Controller will calculate the amount the employee could have received, to include any MOA gross up provisions, and will add that amount to the employee's taxable year IRS Form W2. The employee will not receive cash for this calculation.
 - II. The Auditor-Controller will withhold and report all employee and employer applicable taxes and retirement contributions for the final paycheck of the taxable calendar year (pay period 26), resulting in a reduced "Net Pay Distribution" balance.
- D. Should the IRS conduct an audit of the County's leave programs that result in an adverse audit finding, the County and employee may be accountable for any tax consequences up to three calendar years prior.

2. Form

During the Benefits Open Enrollment period, employees will be provided with a **Payroll Services Election / Deduction Authorization Cash in Lieu of Leave Hours** election form. Forms will also be made available to employees through their designated Human Resource/Payroll locations and can be downloaded from the Auditor-Controller's internet and intranet websites.

The employee is responsible for completing and submitting the form as follows:

- A. The employee must complete **Section A: Election to Receive Cash in Lieu of Leave Hours** of the form and check the applicable box to either "Elect Cash in Lieu of Leave Hours" or "Waive Cash in Lieu of Leave Hours". This election is irrevocable.
- B. The employee must indicate the number of hours they intend to receive as cash in lieu of leave in the subsequent taxable calendar year.
- C. The employee must sign and date the form.
- D. Incomplete forms will be returned to the employee for further action.
- E. All forms, including those returned to an employee as incomplete, must be submitted to and received by the Auditor-Controller's Office prior to December 31 of the preceding accrual and redemption period. The following options are available for submission:

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- I. An original form, completed with signature, hand carried to the Auditor-Controller's Office. The form will be date/time-stamped upon receipt.
 - II. An original form, completed with signature, returned to the Auditor-Controller's Office via Brown Mail #1540. The form will be date/time-stamped upon receipt.
 - III. Signed electronic copies may be emailed to AC.Payroll@ventura.org followed by submission of the original form, completed with signature, at the earliest possible date. An email confirmation receipt will be provided, and the employee is encouraged to retain it as reference.
- F. Agency/department payroll staff will be notified of elections received.
 - G. Any employee who fails to submit an election by December 31 of the preceding taxable calendar year, or submits an incomplete form, shall not be allowed cash in lieu of leave hours during the designated cash out period.
 - H. The employee is responsible for obtaining, completing and submitting request forms by the statutory deadlines imposed. The Auditor-Controller is not responsible for lost, destroyed, or misdirected forms.
3. Financial Hardship

Employees who experience an unforeseeable emergency may be permitted to make a new irrevocable election and redeem leave hours for cash, or to increase the amount of a previous election, during the calendar year in which the unforeseeable emergency occurs. There are no provisions to allow an employee to opt-out of an election to receive cash in lieu of leave. Whether an occurrence is an unforeseeable emergency shall be determined by the Auditor-Controller's Office.

The employee is responsible for completing and submitting the form as follows:

- A. The employee must complete **Section B: Hardship Election to Receive Cash in Lieu of Leave Hours** of the **Payroll Services Election / Deduction Authorization Cash in Lieu of Leave Hours** form. This election is irrevocable.
- B. The employee must indicate the number of election hours they intend to purchase during the taxable calendar year in which the unforeseeable emergency occurs. The number of election hours requested, alone or combined with an initial election to receive cash in lieu of leave hours, may not exceed the total amount authorized by the MOA.
- C. The employee must sign and date the form.
- D. Incomplete forms will be returned to the employee for further action.
- E. All forms, including those returned to an employee as incomplete, must be submitted to the Auditor-Controller's Office for processing. The following options are available for submission:
 - I. An original form, completed with signature, hand carried to the Auditor-Controller's Office. The form will be date/time-stamped upon receipt.

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- II. An original form, completed with signature, returned to the Auditor-Controller's Office via Brown Mail #1540. The form will be date/time-stamped upon receipt.
 - III. Signed electronic copies may be emailed to AC.Payroll@ventura.org followed by submission of the original form, completed with signature, at the earliest possible date. An email confirmation receipt will be provided, and the employee is encouraged to retain it as reference.
- F. Due to the sensitive nature of financial hardship requests, Payroll Services staff will contact the employee directly to obtain additional information resulting from the request. Requests to elect Financial Hardship will be reviewed by the Auditor-Controller. Upon final review and approval/disapproval, the employee will be notified directly.
4. Exceptions
- A. Under certain MOAs, an employee may cash out leave hours carried over from a prior calendar year if and only if the following conditions are met:
 - I. At the time the employee makes an irrevocable election to receive cash in lieu of leave hours, the employee must submit a notice of intent to the County Executive Office-Human Resources, to retire in the taxable calendar year in which the leave will be cashed out.
 - II. At the time the employee makes a request for cash out payments, the employee must submit an irrevocable notice of resignation/retirement to the CEO-HR on a specified date in the taxable calendar year during which the payment is to be made.
 - III. Forms may be obtained by contacting the CEO-HR.
 - B. Other MOA exceptions may apply. Employees should refer to their governing MOA for specific provisions.
5. Confirming Eligibility
- A. Upon receipt of the election form, Auditor-Controller Payroll Services will confirm employee eligibility. Only employees that meet eligibility requirements prior to or during the taxable leave redemption period may be allowed cash in lieu of leave hours during the taxable calendar year period. Employees ineligible to receive cash in lieu of leave hours must wait for the next open enrollment cycle to perform another election and request a purchase.
 - B. Employees who elect cash in lieu of leave hours but do not qualify will be notified by Payroll Services.

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CASH OUT PROCESS

- To receive cash in lieu of leave hours, employees must complete a **"Payroll Services Request for Payment of Cash in Lieu of Leave Hours"** form. Completed forms must be submitted to Auditor-Controller Payroll Services for action. Forms may be obtained from the Auditor-Controller's Office websites.
- Eligible employees may request reimbursement for cash in lieu of leave hours twice per calendar year and can only redeem hours through eligibility and availability of hours elected. For example:
 - An employee elects to redeem 80 hours during the taxable calendar year accrual/redemption period.
 - The employee has the option of receiving cash in lieu of leave hours for a cumulative election total of 80 hours incrementally, twice within the taxable calendar year accrual/redemption period.
 - The employee submits a request for 40 hours cash in lieu of leave hours.
 - The employee must first accrue and have remaining in their bank 40 hours to be eligible to receive cash in lieu of 40 leave hours, and all other eligibility requirements must be met.

Example:

Pay Periods	PP01	PP02	PP03	PP04	PP05	Employee eligible to purchase 40 hours after pay period 05, if all CBA provisions are met
PP Hours Accrued	8	8	8	8	8	
Total Hours Accrued	8	16	24	32	40	

- Upon receipt of the employee's request to receive cash in lieu of leave hours, Payroll Services will reconfirm eligibility.
- Upon confirmation of employee eligibility by Payroll Services, and unless otherwise specified, the employee will be paid during the next biweekly on-cycle process in accordance with the MOA, County and/or Auditor-Controller policy and applicable law.
- Requests received outside of the biweekly pay cycle will be taxed at the mandated withholding rates. By law, the Auditor-Controller must withhold taxes at the Federal and State mandated rates for all supplemental payments irrespective of the employee's requested withholding order of record in VCHRP.
- Hours elected, but not purchased within the calendar year period, will be automatically paid out to the employee by Payroll Services prior to the final pay period (e.g. 26) of the taxable calendar year. No action will be taken on accounts where hours were elected and no leave hours accrued remain to be paid out.
- Policies and procedures governing the payment of employees who separate from County, Special District, or Superior Court services are not affected by this policy.

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8. Copies of election and request forms will be maintained by Payroll Services for seven (7) years.
9. The Auditor-Controller reserves the right to modify these policies and procedures as is necessary to comply with applicable law.