

Side Letter Agreement between the
County of Monterey and
The Deputy Sheriff's Association
regarding Vacation Buy Back Process Change in the A, B, C Memoranda of Understanding

Currently, employees in your bargaining groups A and B are allowed to cash out a maximum of forty (40) hours of vacation per calendar year and maintain a minimum of forty (40) hours combined vacation and sick time upon cash out. Employees in bargaining group C with over one (1) year of service in their current class may cash out up to 40 (forty) hours of Annual Leave or PTO time per calendar year, however forty (40) hours must remain in his/her Annual Leave and/or PTO bank after the cash out.

It has come to the County's attention that Internal Revenue Services (IRS) regulations and opinions on rules related to constructive receipt of income require the County to report and withhold taxes on the value of vacation leave an employee earns and is *eligible* to cash out in a taxable year, even if that leave is not in fact cashed out. The basis for these rules is that income is constructively received when it is made available for a taxpayer to draw on at any time, as employees may do with leave accruals eligible for cash out. The County must follow these tax requirements.

The County has identified a way to ensure compliance with the IRS requirements and mitigate the potential tax consequences to employees while continuing to make the cash out benefit available. The IRS provides an exception to the doctrine of constructive receipt where a taxpayer makes an agreement to defer income before it is earned. The IRS has found that in such agreements in which an employee makes an irrevocable election in advance of the year in which he or she would be eligible to cash out leave accrued in that year may exempt the amount eligible to be cashed out from annual gross income.

The Deputy Sheriff's Association has met and conferred on the issue of updating the Vacation Buy Back section in Units A, B and C MOU. Both parties agree to modify the Units A, B and C Memoranda of Understanding as follows:

Bargaining Units A and B:

SECTION 7 VACATION LEAVE

7.1 Vacation will be accrued at the following rates (for the purposes of vacation accrual, a day is defined as eight (8) hours):

After 6 months of continuous employment	10 days (80 hours)/year 3:08 hours pay period
After 3 years of continuous employment	15 days (120 hours)/year 4:38 hours pay period
After 10 years of continuous employment	20 days (160 hours)/year 6:09 hours pay period
After 20 years of continuous employment	21 days (168 hours)/year 6:28 hours pay period
After 21 years of continuous employment	22 days (176 hours)/year 6:47 hours pay period
After 22 years of continuous employment	23 days (184 hours)/year 7:05 hours pay period
After 23 years of continuous employment	24 days (192 hours)/year 7:23 hours pay period
After 24 years of continuous employment	25 days (200 hours)/year 7:42 hours pay period

7.2 The maximum vacation accrual is four hundred (400) hours.

7.2.1 Paid Time Off /Vacation Cash Out

An employee may cash out up to forty (40) hours of Paid Time Off (PTO) or vacation time per calendar year, however forty (40) hours must remain in his/her vacation and/or PTO bank after the cash out.

7.2.2 All employees with hours in the PTO bank will have this time available for leave usage and/or for pay out upon separation from employment.

7.3 Election to Cash out PTO or Vacation

In order to cash out or otherwise require the County to buy back vacation, annual leave or paid time off, the employee must first meet the eligibility criteria set forth in the applicable provision of the bargaining agreement. If such criteria are met, only then the employee may request and be granted compensation in lieu of vacation/annual leave/PTO for up to the amounts set forth in the bargaining agreement under the terms set forth below. If such criteria are not met as of December 31st of the calendar year in which the election is required to be made, the employee has no right to elect to cash out accrued time in the next calendar year.

- A. An eligible employee must elect to pre-designate an irrevocable cash-out amount of up to the maximum number of hours of vacation/annual leave/PTO for the upcoming calendar year as set forth for his/her respective class. Requests for cash out must be made prior to December 1 of the calendar year before the cash out will be made (for example, requests for the 2017 calendar year will be made before December 1, 2016).
- B. Cash out designations shall be made in hours, not dollar amounts, and must be in increments of 8 hours.

Any such request will be subject to the following:

- i. Any employee utilizing this provision will be required to submit an irrevocable election by December 1st of the calendar year prior to the calendar year in which the vacation/annual leave/PTO hours to be cashed out are earned.
- ii. An employee who elected to receive the cash out as set forth above, may request a full or a partial payment of the cash out at any time in the designated calendar year, but only once per calendar quarter. For requested cash out occurring in 2017, full or partial cash out payment is not guaranteed in the month of January.
- iii. For employees who have pre-designated cash out amounts and who have not requested actual payment(s) of the entire designated cash out amount by December 1st of that calendar year, the County will automatically pay out the pre-designated amount (or remaining amount designated but not paid) by the last paycheck of the calendar year.
- iv. Employees who have not elected to pre-designate a cash out by the applicable deadline (December 1st of the prior calendar year) will be deemed to have waived their right and will not be eligible to cash out any vacation/annual leave/PTO in the following calendar year (for example, if no designation is made by December 1, 2016, no cash out is available in 2017).

7.3.1 All employees with hours in the PTO bank will have this time available for leave usage and/or for pay out upon separation from employment.

Bargaining Unit C:

SECTION 4 ANNUAL LEAVE

Notwithstanding the provisions of any other agreement or resolution, the Annual Leave program shall be in lieu of provisions providing vacation and sick leave benefits. Employees covered under the annual leave program shall not be eligible for any vacation and sick leave benefits except for those set forth below.

4.1 Accrual Rate Limit

Eligible employees shall accrue annual leave at the following rates (for the purposes of annual leave accrual, a day is defined as (8) hours):

Years of Completed

Continuous County Services

Annual Leave Accrual

0 - 10 years	23 days (184 hours) 7:05 hours pay period
10 - 20 years	28 days (224 hours) 8:28 hours pay period
20 - 22 years	31 days (248 hours) 9:33 hours pay period
22 - 23 years	32 days (256 hours) 9:51 hours pay period
23 - 24 years	33 days (264 hours) 10:09 hours pay period
24 - 25 years	34 days (272 hours) 10:28 hours pay period
Over 25 years	35 days (272 hours) 10:47 hours pay period

A maximum of six hundred seventy-five (675) hours of Annual Leave may be accrued after which no further accrual shall be made until the employees' accrual is reduced to below six hundred seventy-five (675) hours by the use of Annual Leave. Annual Leave shall be earned on the basis of each biweekly pay period worked from the beginning of the biweekly pay period following the permanent appointment into a position in a class that is included in the Safety Management Unit. No Annual Leave shall be credited for any pay period during which an employee is on any non-paid status exceeding one-half (1/2) of the employee's normally scheduled working days.

It is further understood and agreed that during the life of this agreement the County may switch the accrual of Annual Leave from a pay period to an hourly basis. Under an hourly accrual system, accruals would automatically be prorated based on hours worked. Paid Annual Leave shall be considered hours worked for purposes of Annual Leave accrual.

4.2 Sick Leave Balance; Usage and Pay-Off

Sick leave balances were frozen at the amount credited to the employee as of January 8, 1982. Sick leave may be used until the sick leave balance is exhausted. Unused sick leave may be paid off upon retirement pursuant to the provisions of the Monterey County Personnel Policies and Practices Resolution. Sick leave may be used in the same manner as prescribed in Article 27 of the Monterey County Personnel Policies and Practices Resolution. An employee, in lieu of cashing out five hundred (500) hours of sick leave, may convert up to seven hundred fifty (750) hours of their accumulated sick leave to the purchase of individual only health benefits under the County health plan.

Employees hired or promoted into Bargaining Unit C after July 27, 1999, will not receive Industrial Sick Leave Pay. Employees hired or promoted into Unit C on or before July 27, 1999, will continue to receive Industrial Sick Leave Pay.

4.3 Annual Leave Usage

Each Appointing Authority shall be responsible for scheduling the Annual Leave periods of his/her employees in such a manner as to achieve the most efficient functioning of the department or agency and of the County service. The Appointing Authority shall determine when Annual Leave will be taken.

Policy Statement: All eligible employees in the Annual Leave program are expected to use at least 80 (eighty) hours of annual leave in each calendar year following the calendar year in which they are appointed.

When unscheduled usage of Annual Leave occurs, verification of reason for absence may be required of the employee. Further, employees claiming illness or injury may be required to furnish a certificate issued by a licensed physician or other satisfactory evidence of illness. Any person absent from work shall notify his/her department or division head at the beginning of the first day of such leave and as often thereafter as directed by the department or division head. The County Administrative Officer or the Appointing Authority may request that a medically trained employee verify the employee's illness by a visit to the employee's residence or may invoke the provision of Section B.7 entitled "Physical Fitness Examination" of the Personnel Policies and Practices Resolution.

4.4 Annual Leave Cash Out

Permanent, full-time unit employees with over one (1) year of service in their current class may cash out up to 40 (forty) hours of Annual Leave or PTO time per calendar year, however forty (40) hours must remain in his/her Annual Leave and/or PTO bank after the cash out.

4.5 Election to Cash out Annual Leave

In order to cash out or otherwise require the County to buy back vacation, annual leave or paid time off, the employee must first meet the eligibility criteria set forth in the applicable provision of the bargaining agreement. If such criteria are met, only then the employee may request and be granted compensation in lieu of vacation/annual leave/PTO for up to the amounts set forth in the bargaining agreement under the terms set forth below. If such criteria are not met as of December 31st of the calendar year in which the election is required to be made, the employee has no right to elect to cash out accrued time in the next calendar year.

- A. An eligible employee must elect to pre-designate an irrevocable cash-out amount of up to the maximum number of hours of vacation/annual leave/PTO for the upcoming calendar year as set forth for his/her respective class. Requests for cash out must be made prior to December 1 of the calendar year before the cash out will be made (for example, requests for the 2017 calendar year will be made before December 1, 2016).
- B. Cash out designations shall be made in hours, not dollar amounts, and must be in increments of 8 hours.

Any such request will be subject to the following:

- i. Any employee utilizing this provision will be required to submit an irrevocable election by December 1st of the calendar year prior to the calendar year in which the vacation/annual leave/PTO hours to be cashed out are earned.
- ii. An employee who elected to receive the cash out as set forth above, may request a full or a partial payment of the cash out at any time in the designated calendar year, but only once per calendar quarter. For requested cash out occurring in 2017, full or partial cash out payment is not guaranteed in the month of January.

- iii. For employees who have pre-designated cash out amounts and who have not requested actual payment(s) of the entire designated cash out amount by December 1st of that calendar year, the County will automatically pay out the pre-designated amount (or remaining amount designated but not paid) by the last paycheck of the calendar year.
- iv. Employees who have not elected to pre-designate a cash out by the applicable deadline (December 1st of the prior calendar year) will be deemed to have waived their right and will not be eligible to cash out any vacation/annual leave/PTO in the following calendar year (for example, if no designation is made by December 1, 2016, no cash out is available in 2017).

4.6 Annual Leave Pay-Off Upon Termination

Any eligible employee who terminates or is terminated, shall be paid at the then prevailing hourly rate of pay for each hour of earned Annual Leave based on the pay rate in effect for such person on the last day actually worked or spent on authorized leave.


4.7 Rate of Pay While on Annual Leave

While on annual authorized leave, eligible employees shall be compensated at their base salary rate.

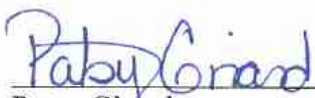
4.8 Use of Annual Leave When Permanently Incapacitated

Annual leave shall not be used to continue the salary of any eligible employee after it has been determined by the Medical Director at Natividad Medical Center that such officer or employee is permanently incapacitated for a return to County employment.

All other provisions of the MOU shall remain in full force and effect. This agreement is subject to the final approval by the Monterey County Board of Supervisors. The terms described herein constitute the complete and entire agreement between the parties.


Brette Neal
County of Monterey

10/18/2016
Date


Patsy Girard
County of Monterey

10/18/2016
Date


Nate DiMaggio
MCDSA

10/18/16
Date