



Monterey County

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Board Report

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Report back to the Board of Supervisors regarding discussions with Monterey County Employees concerning proposals for the Election of Cash Out of Vacation /Annual Leave/ Paid Time Off (PTO) and provide direction to staff.

RECOMMENDATION:

It is recommended that the Board of Supervisors consider the following:

- a. A presentation on additional consultations with Monterey County Employees on approaches to avoid constructive receipt by creation of a "Stand Alone" Program for the Election of Cash out of Vacation /Annual Leave/ Paid Time Off (PTO);
- b. Direct that staff return with a recommendation to amend the County's Personnel Policies and Practices Resolution to add provisions for the Election of Cash Out of Vacation /Annual Leave/ Paid Time Off (PTO) that provides immediate protection from constructive receipt; and
- c. Direct that staff pursue an Internal Revenue Service (IRS) Private Letter Ruling on the validity of an emergency provision request, developed as much as possible with bargaining units and unrepresented units, to the Cash Out of Vacation/Annual Leave/PTO Stand Alone Program.

SUMMARY/DISCUSSION:

Monterey County offers a Vacation Buy Back/Cash Out program to certain employees. According to our Auditor-Controller, the current program could be in non-compliance with Constructive Receipt Doctrine of the IRS, thus making the value of accrued leave taxable, if the County does not adopt a plan that has an irrevocable election component by December 31, 2015.

Staff originally agendized a proposal to place the buy-back/cash-out program into the County's existing Section 125 Plan for August 25, but re-agendized the matter to September 1, in response to concerns raised by various bargaining units. On September 1, the Board first considered the matter and then set a Special Meeting for September 11 so that staff could continue to meet with employee groups. On September 11, the Board directed the staff to develop a "stand alone" program outside of the Section 125 Plan for possible consideration, to extend discussions with employees, and to report back on September 29.

Staff initiated requests for discussions with employee groups at the end of July, and has been exchanging information and meeting with them since that time. A number of bargaining units have indicated their willingness to discuss this program as part of normal negotiations. Staff has also reached out to other municipal entities and conducted further research to determine

what may have been done, and what is likely to be accepted by the IRS.

While these efforts are continuing, the consensus of opinion from other counties that have instituted such programs, and from special tax advisors, is that if the County wishes to protect employees from constructive receipt of vacation buy-back/cash-out for 2016, the safest way would be to institute a straightforward “irrevocable election” program now. Current language for a proposal that is being circulated and discussed with employees is included as Attachment A. A final proposal is anticipated to be brought to the Board for consideration in early October, to allow for an “enrollment” period of approximately six (6) weeks.

Staff is also seeking direction, however, to try to develop an improved program that responds to employee’s concerns over “emergencies” but still passes IRS muster, through discussions with employee groups and tax specialists. Such an “improved program” would then be the subject of a request for a Private Letter Ruling from the IRS, and, if a positive response is received, the Board could adopt the “improved program” in the future.

OTHER AGENCY INVOLVEMENT:

The Office of the Auditor-Controller, Human Resources Department and the CAO have worked together with the County Counsel’s Office and outside legal counsel to develop a Stand Alone Program for County staff.

FINANCING:

In 2014, employees cashed out a total of \$2,362,847 in accrued leave under this benefit. At this point, it is unknown what impact a Stand Alone Program would have on requiring employees to “plan ahead” will have on total “cash outs.”

Prepared and approved by: Manuel T. González, Interim Human Resources Director, x3593

Attachments:

Attachment A: Draft PPR 9-29-15