



Olivehurst Public Utility District Vacation Cash-Out Policy

Purpose

The purpose of this policy is to provide restrictions, clarification and guidance regarding vacation cash-out by OPUD regular, benefited employees.

Scope

This policy applies to all regular, benefited OPUD employees, who are entitled to cash out excess vacation.

Policy

By default, every regular, benefited OPUD employee is restricted from cashing out vacation. To become eligible for cash out of up to 40-hours of excess vacation for each calendar year, the employee must satisfy **all** of the below criteria:

- Prior to the beginning of each calendar year, i.e. no later than the last working day of the previous calendar year, each regular, benefitted employee wishing to become eligible must complete OPUD Vacation Cash Out Declaration Form (Exhibit A to this policy).
 - Filing, or choosing not to file, the OPUD Vacation Cash Out Declaration Form is irrevocable, i.e. employees are prohibited from changing their status after the last working day of the previous calendar year. However, if an employee, who chose to be ineligible, endures specific unforeseen emergency circumstances, the employee may become eligible for excess vacation cash out. See Exhibit B to this policy for definitions of unforeseen emergency.
- Have an accrued balance of at least 180-hours of vacation at the time of cash out.
- Use at least 40-hours or vacation in conjunction with (i.e. cash out must be in the same pay period or an adjacent pay period) the cash out of excess vacation; so called Use a Week/Sell a Week.

Restrictions and Clarifications

If the employee elects to cash-out/sell a week during a given calendar year, he/she must do so by the last pay period entirely in December of that same calendar year. The cash out cannot be “rolled” into a future calendar year.

If an eligible employee (meets all the criteria delineated above) does NOT cash out vacation , the employee will be subject to payroll tax withholding in accordance with the Constructive Receipt Doctrine regardless of the fact that the employee did not receive the income from cash out. However, if the employee is otherwise ineligible due to failing to accrue at least 180-hours of vacation at any time in the effected calendar year, the tax withholding consequence would not apply.

If an employee elects **NOT** to cash-out/sell a week of vacation for a given calendar year, the choice is irrevocable, except for the unforeseen emergency exemption described above and detailed in Exhibit B. The amount of cash out under the unforeseen emergency exemption is further restricted as detailed in Exhibit B.

Exhibit A



VACATION CASH-OUT DECLARATION FORM

Effective: 11-21-12
Rev 0

Date:	
Employee Name (Please Print):	
For Calendar Year:	

“Use a Week, Sell a Week”

I believe that I will have accrued 180 hours or more of vacation leave during the calendar year referenced above. I have elected to cash-out 40 hours of vacation leave and schedule a corresponding week of vacation during said calendar year.	
Employee Signature:	

Exhibit B

Required Statutory Definitions

Title 26, Code of Federal Regulations, Section 1.409A-3

(3) **Unforeseeable emergency**—(i) *Definition.* For purposes of §§ 1.409A-1 and 1.409A-2, this section, and §§ 1.409A-4 through 1.409A-6, an *unforeseeable emergency* is a severe financial hardship to the service provider resulting from an illness or accident of the service provider, the service provider's spouse, the service provider's beneficiary, or the service provider's dependent (as defined in section 152, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)); loss of the service provider's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance, for example, not as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the service provider. For example, the imminent foreclosure of or eviction from the service provider's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the costs of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse, a beneficiary, or a dependent (as defined in section 152, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)) may also constitute an unforeseeable emergency. Except as otherwise provided in this paragraph (i)(3)(i), the purchase of a home and the payment of college tuition are not unforeseeable emergencies. Whether a service provider is faced with an unforeseeable emergency permitting a distribution under this paragraph (i)(3)(i) is to be determined based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the service provider's assets, to the extent the liquidation of such assets would not cause severe financial hardship, or by cessation of deferrals under the plan. A plan may provide for a payment upon a specific type or types of unforeseeable emergency, without providing for payment upon all unforeseeable emergencies, provided that any event upon which a payment may be made qualifies as an unforeseeable emergency.

(ii) **Amount of payment permitted upon an unforeseeable emergency.** Distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include amounts necessary to pay any Federal, state, local, or foreign income taxes or penalties reasonably anticipated to result from the distribution). Determinations of amounts reasonably necessary to satisfy the emergency need must take into account any additional compensation that is available if the plan provides for cancellation of a deferral election upon a payment due to an unforeseeable emergency. See paragraph (j)(4)(viii) of this section. However, the determination of amounts reasonably necessary to satisfy the emergency need is not required to take into account any additional compensation that is available from a qualified employer plan as defined in § 1.409A-1(a)(2) (including any amount available by obtaining a loan under the plan), or that due to the unforeseeable emergency is available under another nonqualified deferred compensation plan (including a plan that would provide for deferred compensation except due to the application of the effective date provisions under § 1.409A-6). The payment may be made from any plan in which the service provider participates that provides for payment upon an unforeseeable emergency, provided that the plan under which the payment was made must be designated at the time of payment.

(iii) **Payments due to an unforeseeable emergency.** A service provider may retain discretion with respect to whether to apply for a payment upon an unforeseeable emergency, and a service recipient may retain discretion with respect to whether to make a payment available under the plan due to an unforeseeable emergency. A service provider who has experienced an unforeseeable emergency will not be treated as making a subsequent deferral election under § 1.409A-2(b) (subsequent deferral election rules) if the service provider does not apply for or elect to receive a payment available under the plan. A service recipient will not be treated as making a subsequent deferral election under § 1.409A-2(b) (subsequent deferral election rules) if the service recipient exercises its discretion not to make a payment otherwise available due to an unforeseeable emergency.

(4) **Disability**—(i) *In general.* For purposes of §§ 1.409A-1 and 1.409A-2, this section, and §§ 1.409A-4 through 1.409A-6, except as otherwise specifically provided, a service provider is considered disabled if the service provider meets one of the following requirements:

(A) The service provider is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

(B) The service provider is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the service provider's employer.

(ii) *Limited plan definition of disability.* A plan may provide for a payment upon any disability, and need not provide for a payment upon all disabilities, provided that any disability upon which a payment may be made under the plan complies with the provisions of this paragraph (i)(4).

(iii) *Determination of disability.* A plan may provide that a service provider will be deemed disabled if determined to be totally disabled by the Social Security Administration or Railroad Retirement Board. A plan may also provide that a service provider will be deemed disabled if determined to be disabled in accordance with a disability insurance program, provided that the definition of disability applied under such disability insurance program complies with the requirements of this paragraph (i)(4).

Notes/OPUD Clarifications

Service Provider = Employee

Service Recipient = Employer