



Livermore Education Association

A Professional Organization Representing the Teachers of Livermore

August 10, 2006

Dear LEA Bargaining Unit Members,

On August 8, 2006, everyone should have received a letter from the District Office regarding the number of paychecks members will be receiving for the 2006-2007 and 2007-2008 school year. Below is some background information that will hopefully provide some more information for members. I am writing this in three parts for members and reps. The first version is very short and straight to the point – for members wanting verification that the District isn't violating the contract. The second version is a bit longer and summarizes things simply, but leaves out much of the “logic and reasoning” behind the decision. The third version is very long and continues to lay things out very linear. I used it to walk the Executive Board and Bargaining Team through the issue in an effort to get feedback from them and make this decision.

The SHORT VERSION:

The letter from the District regarding the number of paychecks our members will be receiving is legitimate and the LEA leadership has worked with the District to make decisions that are in the best interest of all of our members while still being sensitive to their individual needs.

The BIT LONGER VERSION:

Last year, the IRS decided to make some changes to their regulations regarding “Constructive Receipts.” Businesses and in our case School Districts have been allowed to spread the dispersal of salary to employees over a period of time. While this makes it easier for those of us who have a difficult time not spending our entire paycheck it has the effect of deferring our taxes into a time that we truly weren't working. Please remember that we do not really get a summer “vacation”, but rather are “unemployed” for that time of year. In November of 2005 and again in March of 2006, school districts in our county were advised by the Alameda County Office of Education that they need to conform to the IRS regulations.

In speaking with the presidents of other local CTA chapters in late-May, I learned that other districts were dealing with this. Some districts announced the changes to their employees in May, while many others hadn't done anything about it. So, I researched the issue on the internet, with CTA, and talked with the District.

In meeting with the District and the presidents of the other bargaining units on June 26, we discussed the various options that the District had. Basically, the District could force every employee in our bargaining unit to 10 paychecks, force every employee in our bargaining unit to 12 paychecks, or force everyone to 12 paychecks and take their taxes and other contributions out of 10 paychecks. The December paycheck piece was not an option. We had to receive our December paycheck in the month of December. {When I added the question asking members if they wanted to receive their December paycheck in December last year when we were discussing the school calendar, LEA had no knowledge of these IRS regulation changes. That question came about through discussions with members.}

In weighing the numbers of LEA members on 12 pay, on 10 pay, and the various situations that members may be in, I felt that our membership would be better off as a whole receiving 10 paychecks. Many of our members who receive 10 paychecks do so because they work additional jobs in the summer to make ends meet. If members found out in August that they would be receiving paychecks that were considerably smaller than they had expected, it could be disastrous for them.

At this meeting, I brought up the issue of working in August. If our members work in August and the IRS wants their taxes during the time that we work, why aren't we receiving a paycheck in August? The District agreed that this was valid. In considering all things, though, the tax implications would be even greater for our members if they were to receive 14 paychecks during the 2006 tax year, so it was decided that members would be given more time to adjust to that change – hence the change to 10 paychecks (one being in December) for the 06-07 school year and the change to 11 paychecks (one in August) for the 07-08 school year.

I've done some investigating with various banks (Patelco, Uncle, WAMU, B of A, etc.) that receive auto-deposits from our members. They are all able to set up a sub-savings account for members and automatically transfer in a desired amount from their checking account as soon as their paycheck is received.

I realize that this change is shocking and will require some adjustment to how we plan for our paychecks, but the LEA leadership did everything it did this summer while looking out for the best interest of all of our members.

The LONG VERSION:

On June 26, I attended a meeting with Yolonda (HR), Brenda Miller (Superintendent), Susan Kinder (Business Services), and the Presidents or representatives of SEIU, CSEA, and LMA to discuss the IRS regulatory changes re: "constructive receipts."

Currently, LEA members may choose to receive their yearly salary spread out over ten monthly paychecks (10 pay), or twelve monthly paychecks (12 pay). Some other employees in the District are twelve month employees and receive their pay over twelve months anyway and some are eleven month employees who currently choose to spread their annual salary out over eleven monthly paychecks or twelve monthly paychecks.

The IRS has made some regulatory changes and want their taxes in the month that they are earned. So, this creates a few issues for LEA members (as well as some other employees in the District).

Back, long, long ago the District had employees on a July to July cycle for payroll to match the fiscal cycle (Joyce Keeler was one of the last three members on this system who are all now retired). Then at some point, since school didn't begin until September, they moved payroll to a September through August cycle. Around the time they did this switch, it is believed that they held the December paycheck over until January (when we return from Winter Break) so that employees would not receive more checks than usual in a school year. This, in effect, deferred payment of taxes into the following tax year. This is one of the crucial things that the IRS wants to change.

Long ago, teachers and other school employees also worked over the course of ten months (September through June). With the lengthening of school years, it has pushed our work into August and our work is really spread out over eleven calendar months. (August through June).

So, it looks like the District is forced to make some changes and we will have to shift with these changes - though I worked with them to try to make this easier for our members.

For the 2006/2007 school year:

• Members will be receiving their December paycheck in the month of December. This will cause our members to receive thirteen paychecks in the 2006 tax year if they currently receive twelve paychecks or eleven paychecks in the 2006 tax year if they currently receive ten paychecks. More importantly though, it will cause their income to rise above normal if they worked in the 2005-2006 school year.

If a member were on 12-pay for 2005-2006, s/he would receive the following checks in tax year 2006:

- | | |
|-----------------------------------|---------------------------------|
| 1) Dec 2005 given in Jan 2006 | (1/12th of their 05/06 salary), |
| 2) Jan 2006 | (1/12th of their 05/06 salary), |
| 3) Feb 2006 | (1/12th of their 05/06 salary), |
| 4) Mar 2006 | (1/12th of their 05/06 salary), |
| 5) Apr 2006 | (1/12th of their 05/06 salary), |
| 6) May 2006 | (1/12th of their 05/06 salary), |
| 7) June 2006 | (1/12th of their 05/06 salary), |
| 8) July 2006 given in June 2006 | (1/12th of their 05/06 salary), |
| 9) August 2006 given in June 2006 | (1/12th of their 05/06 salary), |
| 10) Sept 2006 | (1/10th of their 06/07 salary), |
| 11) Oct 2006 | (1/10th of their 06/07 salary), |
| 12) Nov 2006 | (1/10th of their 06/07 salary), |
| and 13) Dec 2006 | (1/10th of their 06/07 salary). |

Or:

If a member were on 10-pay for 05-06, s/he would receive the following checks in tax year 2006:

- | | |
|-------------------------------|---------------------------------|
| 1) Dec 2005 given in Jan 2006 | (1/10th of their 05/06 salary), |
| 2) Jan 2006 | (1/10th of their 05/06 salary), |
| 3) Feb 2006 | (1/10th of their 05/06 salary), |
| 4) Mar 2006 | (1/10th of their 05/06 salary), |
| 5) Apr 2006 | (1/10th of their 05/06 salary), |
| 6) May 2006 | (1/10th of their 05/06 salary), |
| 7) June 2006 | (1/10th of their 05/06 salary), |
| 8) Sept 2006 | (1/10th of their 06/07 salary), |
| 9) Oct 2006 | (1/10th of their 06/07 salary), |
| 10) Nov 2006 | (1/10th of their 06/07 salary), |
| and 11) Dec 2006 | (1/10th of their 06/07 salary). |

Last updated: August 30, 2006

- For the 2006-2007 school year, our members will only have the option of receiving ten paychecks. Because we are still considered ten-month employees, we will be receiving ten paychecks and will have to save our own money aside to survive the months of August and September. The District will not act as a bank for us.
- Receiving our salary divided by ten months instead of twelve months during the 2006-2007 school year will also cause members to receive slightly more income than expected during the 2006 tax year. While the first nine checks of 2006 were each 1/12 of their 2005-2006 salary, checks #10 through #13 will each be 1/10 of their 2006-2007 salary. This is what causes our total annual income to rise for IRS purposes. So, in addition to saving money on their own for the summer months, our members will need to consult their tax/financial planners to find out the tax and financial implications for them personally.
- Members who have money deducted automatically from their paychecks (for health care contributions, tax sheltered annuities, section 125 plans, etc.) will need to check with those companies/advisors who handle their accounts to make sure that they have the correct amount taken out and do not exceed the maximum contribution for the 2006 calendar year.

You can visually see it this way:

For members currently on "12 pay": 9/12ths of their 2005/06 salary + 4/10ths of their 2006/07 salary is more than their normal income of 9/12ths of their 2005-2006 salary + 3/12ths of their 2006-2007 salary. They'll essentially be getting 15% more income in tax year 2006 than they normally would have.

Under the new system of 10 pay with no deferred December check:

2005-2006 on a 12-pay system and 2006-2007 school years on a 10-pay system

Calendar Year 2006

Dec, 2005	received Jan, 2006	1/12
Jan, 2006		1/12
Feb, 2006		1/12
Mar, 2006		1/12
Apr, 2006		1/12
May, 2006		1/12
June, 2006		1/12
July, 2006	received June, 2006	1/12
Aug, 2006	received June, 2006	1/12
Sept, 2006		1/10
Oct, 2006		1/10
Nov, 2006		1/10
Dec, 2006		1/10

total salary:

1 3/20

For members currently on "10 pay": 7/10ths of their 2005-2006 salary + 4/10ths of their 2006-2007 salary is more than their normal income of 7/10ths of their 2005-2006 salary and 3/10ths of their 2006-2007 salary. They'll essentially be getting 10% more income in tax year 2006 than they normally would have.

Under the new system of 10 pay with no deferred December check:

2005-2006 on a 10-pay system and 2006-2007 school years on a 10-pay system

Calendar Year 2006

Dec, 2005	received Jan, 2006	1/10
Jan, 2006		1/10
Feb, 2006		1/10
Mar, 2006		1/10
Apr, 2006		1/10
May, 2006		1/10
June, 2006		1/10
Sept, 2006		1/10
Oct, 2006		1/10
Nov, 2006		1/10
Dec, 2006		1/10

total salary:

1 1/10

For the 2007/08 school year, some additional changes will occur:

- Current “10 month employees” will be considered “11 month employees” because LEA members work August through June.
- Members will receive 11 checks. Their annual income will be divided into 11 paychecks (instead of the current 10 or 12). This will cause our members to need to save some money aside to survive without a July paycheck.
- Members will see a slightly higher than normal income in the tax year 2007. This is because they will receive the following checks in 2007:
 - 1) Jan 2007 (1/10th of their 06/07 salary)
 - 2) Feb 2007 (1/10th of their 06/07 salary)
 - 3) Mar 2007 (1/10th of their 06/07 salary)
 - 4) April 2007 (1/10th of their 06/07 salary)
 - 5) May 2007 (1/10th of their 06/07 salary)
 - 6) June 2007 (1/10th of their 06/07 salary)
 - 7) Aug 2007 (1/11th of their 07/08 salary)
 - 8) Sept 2007 (1/11th of their 07/08 salary)
 - 9) Oct 2007 (1/11th of their 07/08 salary)
 - 10) Nov 2007 (1/11th of their 07/08 salary)
 - and 11) Dec 2007 (1/11th of their 07/08 salary)

You can see it this way:

For members currently on "12 pay": 6/10ths of their 2006-2007 salary + 5/11ths of their 2007-2008 salary is more than their current income structure of 9/12ths of their 2006-2007 salary and 3/12ths of their 2007-2008 salary. They'll essentially be getting 5% more income in tax year 2007 than they normally would have.

For members currently on "10 pay": 6/10ths of their 2006-2007 salary + 5/11ths of their 2007-2008 salary is more than their current income structure of 7/10ths of their 2006-2007 salary and 3/10ths of their 2007-2008 salary. They'll essentially be getting 5% more income in tax year 2007 than they normally would have.

- Finally, for the 2007/08 school year, our members will have 11 disbursements for their Tax Sheltered Annuities (TSAs), 125 plans, and Health Care Payments (if they pay the District for some of their benefit costs). So, members using these services will need to consult their financial planners to determine the correct amount to come out of their 11 checks instead of the 10 or 12 paychecks they currently receive.

Then, ultimately - all will be normal is 2008-2009 when members receive 11 paychecks Aug-June, have 11 disbursements for TSAs, 125 plans, and Health Care Payments, and receive their normal compensation in one annual tax year cycle.

Now, the District posed a couple of options and I thought very long and deeply on this subject to try to get something in the best interest of our members:

1. Force everyone to 12 paychecks. Doing this (having everyone on one system with no choice) somehow gets around part of the IRS regulation according to Pleasanton's legal analysis.
2. Force everyone to 10 paychecks.
3. Allow 12 paychecks, but have all disbursements and taxes taken out of the first 10. Doing this would basically turn the district into a savings account while our members earned no interest.

I pushed for the 11 paychecks (eventually, with over a full year to adjust and help members) and we had no choice on the December paycheck piece. Below are my reasons why:

Reasons:

1. People on 12-pay can learn to save. People on 10-pay who rely on their ten paychecks and work during the summer to make up for no income would not be able to meet their current monthly finances if the entire district went to twelve paychecks. We have 534 members who spread their paychecks over twelve months and 159 who spread their paychecks over ten months. While only 29% of our members use 10-pay, the damaging effects (getting way less money than expected in a monthly paycheck) far outweighed the damaging effects (having to save money on our own) for the 81% of our members using 12-pay.
2. We can legally wait until 2007-2008 to become "11 month employees" and go to 11 paycheck dispersals (annual salary divided by eleven) and it will give our members more time to adjust. Plus, if we went to eleven paychecks for the 2006-2007 school year, it would cause members to receive fourteen paychecks in one year - the December paycheck in December instead of January **and** an extra one in August.
3. Getting paychecks divided into eleven months will allow new employees in 2007-2008 to receive their first paycheck at the end of August instead of waiting a month and a half before receiving any pay. (Though their benefits will still begin on Oct 1 because we have an Oct 1 - Sept 30 health care plan cycle).
4. Hopefully with raises in 2006-2007 and 2007-2008 and a year to adjust, anyone who's just barely making their house payment or rent right now on ten paychecks, will still be able to make ends meet when they're having their salary spread over eleven months.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
LIVERMORE VALLEY EDUCATION ASSOCIATION AND THE
LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT**

WHEREAS, Article 20.4 of the current agreement between the Livermore Valley Education Association ("LEA") and the Livermore Valley Unified School District ("District") states:

20.4 Employees may choose to receive their salary payments in either ten (10) or twelve (12) equal installments.

20.4.1 By June 30 of each year, the employee shall declare in writing to the Human Resources department whether he/she elects the 10 or 12 month option for the following year.

20.4.2 Once the option is selected, the employee may not change that option during that school year;

WHEREAS, it has come to the attention of both the District and the Association that the Internal Revenue Service ("IRS") is concerned about the concept of constructive receipt, that is that the tax on earnings is due at the time the money is earned, not necessarily when it is paid;

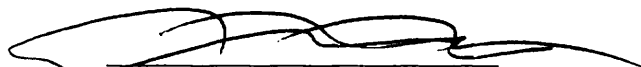
WHEREAS, the Alameda County Office of Education has informed the District that in order to avoid possible fines for both the District and the employees, it is crucial to pay salaries and withhold taxes at the time money is earned; and

WHEREAS, it is the intent of both LEA and the District to enable all unit members in the certificated bargaining unit and the District to avoid additional costs;

NOW THEREFORE, LEA and the District agree that effective with the 2006-2007 fiscal year, Article 20.4 shall be temporarily suspended until such time as the regulation either changes allowing or requiring something different or legal interpretation and application change allowing members to choose between either 10 pay or 12 pay. Therefore the employee's annual salary will be divided by 10 and the employee will receive one-tenth each month, starting in September, 2006 and continuing through June, 2007. Then, effective in the 2007/2008 school year, all school year bargaining unit members will receive their annual salary in 11 installments beginning in August, 2007.


Agreed to this 8th day of August 2006 in Livermore, California.

Livermore Education Association



Keith Pickering-Walters
President, LEA

Livermore Valley Joint Unified School District



Yolonda Holmes
Director of Human Resources, LVJUSD