

Report on Initiatives Removed Propositions
Fair Pay and Employer Accountability Act &
California Pandemic Early Detection and Prevention Initiative

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OVERVIEW

The following report discusses two voter initiatives that had qualified for the November 2024 ballot in the state of California, but were removed before the ballot was printed. The initiatives are the Fair Pay and Employer Accountability Act and the California Pandemic Early Detection and Prevention Initiative, addressed respectively below. The Fair Pay and Employer Accountability Act was a proposal to repeal the California Labor Code Private Attorney General Act and amend the California Labor Code with an alternative regulatory scheme for enforcing the California Labor Code. The California Pandemic Early Detection and Prevention Initiative proposed a new tax on high income earners to generate revenue for a series of new funds and administrative bodies dedicated to preparing the state for another pandemic.

INITIATIVE 21-0027 – “The Fair Pay and Employer Accountability Act of 2022”

I. EXECUTIVE SUMMARY

The Labor Code Private Attorneys General Act of 2004 (“PAGA”), empowers employees to bring actions for civil penalties against their employers for violations of the California Labor Code. In their capacity as private attorneys general, private citizens are empowered to bring legal action against their employers for alleged violations of the California Labor Code without the need to first enjoin the state government. To this end, employees not only seek to recover damages or restitution, but to enforce the Labor Code (*Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 753 (2018)).¹ PAGA originated in the Legislature as Senate Bill 796, which was ratified in 2003 and made effective in 2004.² PAGA has since been the subject of some modification and numerous attempts at removal, including this latest effort via Initiative 21-0027, also known as “The Fair Pay and Employer Accountability Act of 2022.”³ This initiative was an attempt at comprehensive modification of the Labor Code, and would have effectively repealed the Labor Code Private Attorneys General Act of 2004, but this effort was ultimately ended when the initiative was removed from the ballot in June of 2024.

II. THE LAW

A. Existing Law

As it exists now, PAGA, or Part 13 of the California Labor Code, empowers any current or former employee to bring a civil action against their employer for any violation that could be made enforceable by the Labor and Workforce Development Agency (LWDA), or any of its subordinate departments, divisions, agencies, or boards.⁴ In other words, the Act allows private citizens to do what the government itself may do in a court of law, in the form of civil litigation. In other words, rather than lawyers for the government suing employers for Labor Code violations, employees can hire their own lawyers to sue their employers and can get the employers to pay for their attorneys if they win in court. Current law also allows for the collection of attorneys’ fees for prevailing employees, as well as the ability for employers’ to “cure” or correct their violations with reasonable notification of their attempt to cure in lieu of further legal action.⁵

¹ *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal.App.5th 745 (6th Dist. 2018).

² *California Employee Civil Action Law and PAGA Repeal Initiative (2024)*, Ballotpedia, [\(https://ballotpedia.org/California_Employee_Civil_Action_Law_and_PAGA_Repeal_Initiative_\(2024\)\)](https://ballotpedia.org/California_Employee_Civil_Action_Law_and_PAGA_Repeal_Initiative_(2024)) (Last visited October 12th, 2024).

³ Initiative 21-0027: Labor Code Fair Pay and Employer Accountability Act. <https://oag.ca.gov/system/files/initiatives/pdfs/21-0027A1%20%28Employee%20Civil%20Action%29.pdf>.

⁴ California Labor Code, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=13.&chapter=&article=.

⁵ *Id.*

B. Proposed Changes

The Fair Pay and Employer Accountability Act of 2022 would have enacted changes to nearly every section of PAGA, including changing its very name from the latter to the former.⁶ Among other major changes, the new Act would have included a findings section that justified the replacement of the 2004 Act. Chief among these findings is an assertion that the current process fails in providing expedient compensation for alleged injury, and that this lack of expedience compounds what is already a highly encumbered court system, leading to even further delay.⁷

Other changes would also have included the doubling of statutory penalties for willful violations of the Labor Code, as well as the payment of 100% of all monetary awards to plaintiffs directly, rather than apportioning those awards among plaintiffs and the state.⁸ Significantly, the initiative's new provisions would not have authorized the collection of attorneys' fees and would have required the government to once again intervene on behalf of aggrieved employees under a newly created Division of Labor Standards Enforcement (DLSE). This new agency would also have required full funding by the state of California by law, but no specific source of this funding was identified in the initiative language itself. The Labor Commissioner would also no longer be able to contract with private organizations to assist with enforcement-litigation.⁹

C. Path to the Ballot

The initiative was first filed in October 2021, with the California Attorney General issuing ballot language by the following December, which allowed signature collection to begin. By May 2022, proponents announced that the initiative would target the 2024 ballot. By June, the initiative had met its signature requirement by gathering more than 623,212 signatures¹⁰. By the end of July, the initiative had amassed over 700,000 total verified signatures of the more than 900,000 submitted.¹¹

D. Removal from the Ballot

On June 24, 2024, the California Secretary of State published a notice that the initiative's proponents formerly withdrew the initiative from the November General Election ballot.¹² This withdrawal came as a result of compromise legislation, which was introduced and signed into law.

⁶ Initiative 21-0027: Labor Code Fair Pay and Employer Accountability Act.

<https://oag.ca.gov/system/files/initiatives/pdfs/21-0027A1%20%28Employee%20Civil%20Action%29.pdf>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ California Secretary of State, "Final Random Count", July 22, 2022.

¹¹ *California Employee Civil Action Law and PAGA Repeal Initiative (2024)*, Ballotpedia,

[https://ballotpedia.org/California_Employee_Civil_Action_Law_and_PAGA_Repeal_Initiative_\(2024\)](https://ballotpedia.org/California_Employee_Civil_Action_Law_and_PAGA_Repeal_Initiative_(2024)).

¹² "Governor Newsom & legislative leaders announce agreement on PAGA reform",

<https://www.gov.ca.gov/2024/06/18/governor-newsom-legislative-leaders-announce-agreement-on-paga-reform/>.

The new legislation enhances some penalties for Labor Code violations, broadens the opportunities for employers to cure violations when they are identified, and aims to reduce the overall need for litigation.¹³ This is to say that the powers of Private Attorneys General remain intact with slight modification as to the scope of permissible claims.

III. CONSTITUTIONAL AND STATUTORY ISSUES

This initiative did not raise any constitutional or statutory drafting issues. The voters of California have the authority to amend statutes that are passed by the Legislature. Here, the procedural requirements were met and the initiative would have been appropriately placed before the electorate if it had not been removed.

IV. PUBLIC POLICY ISSUES

A. Pros and Cons of Initiative

Allowing the initiative to be enacted would no longer allow private citizens to act as their own attorneys general, requiring the government to intervene in all civil actions involving alleged violations of the California labor code.¹⁴ While individual plaintiffs might be awarded larger portions of money damages by the provisions of the Fair Pay and Employer Accountability Act, attorneys fees would no longer be allotted, which may have a chilling effect on attorneys' willingness to actually litigate such claims. The Labor Department also being unable to claim a significant portion of any money judgment by a court might also stifle future enforcement actions by the state, which would then be denied any share of damages under the provisions of the initiative. While the prize for individuals might grow, the revenue to the state and those who assist in the prosecution of Labor Code violations substantially diminish without access to money damages as a source of additional revenue.

The initiative would have also expanded the allowed window of opportunity for employers who violate the Labor Code to cure their noncompliance, potentially mitigating their liability by a substantial degree by avoiding further litigation.¹⁵ This change was intended to have the effect of reducing the need for protracted litigation and to ensure the expediency of aggrieved parties receiving just compensation in a timelier manner.¹⁶

¹³ AB 228, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024) and SB 92, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

¹⁴ Initiative 21-0027: Labor Code Fair Pay and Employer Accountability Act. <https://oag.ca.gov/system/files/initiatives/pdfs/21-0027A1%20%28Employee%20Civil%20Action%29.pdf>.

¹⁵ Initiative 21-0027: Labor Code Fair Pay and Employer Accountability Act. <https://oag.ca.gov/system/files/initiatives/pdfs/21-0027A1%20%28Employee%20Civil%20Action%29.pdf>.

¹⁶ California Restaurant Association, *California Fair Pay and Employer Accountability Act of 2022 Hits Major Milestone in Signature Gathering*, <https://www.calrest.org/news/california-fair-pay-and-employer-accountability-act-2022-hits-major-milestone-signature> (last visited Oct. 16, 2024).

B. Fiscal Impact

By its own summation, the estimated fiscal impact of the initiative could have “exceed[ed] \$100 million per year,” while reducing penalty revenue used for labor enforcement by “tens of millions of dollars annually.”¹⁷ By the admission of all involved, the repeal of PAGA would have been a financially burdensome step towards creating greater efficiency in adjudicating labor code complaints. The legislative compromise that saw this initiative’s removal from the coming November ballot seems to satisfy some of this appeal to enhanced efficiency by expanding the period for some curable defect,¹⁸ which will have some effect on reducing litigation costs for parties involved in such cases.

C. Similar Initiatives Likely to Reemerge?

Based on an inherent friction between free enterprise and regulation, it is plausible for PAGA to continue to face challenges as it currently exists. It is also conceivable that advocates for more robust workers’ protections may find the current law wholly deficient by their own views. One may find that the legislation still goes too far, and another may find that it does not go far enough. However, as the product of political compromise, the removal of the initiative from the ballot may have bought PAGA more time before the next major challenge. Time will tell if all the parties involved keep to their word, or if some further confound in the legislative process does not necessitate further compromise. At the time of this report’s authorship, none of the parties involved in authoring the challenging initiative have made public statements about reasserting such challenges in the immediate future, and no additional campaign expenditures to that end have been noted.

V. CONCLUSION

The preservation of the Labor Code Private Attorneys General Act, as a present act of compromise between business interests and the legislature, appears to signal a continuing commitment to the relatively robust protection of workers’ rights in the state of California. While the current provisions may offer a relatively modest set of penalties, compared to the penalties proposed by the Fair Pay and Employer Accountability Act, the procedural rights retained by private citizens arguably far outweigh those numeric values alone. Whether PAGA will continue to face continued political or legal challenge seems a matter of inevitability, so long as the preservation of any right continues to face challenge in the form of deregulation.

¹⁷ Legislative Analyst’s Office, Analysis of “The Fair Pay and Employer Accountability Act of 2022”.

¹⁸ “Governor Newsom & legislative leaders announce agreement on PAGA reform”, <https://www.gov.ca.gov/2024/06/18/governor-newsom-legislative-leaders-announce-agreement-on-paga-reform/>.

Initiative 21-0022 – “California Pandemic Early Detection and Prevention Initiative”

I. EXECUTIVE SUMMARY

Initiative 21-0022, or the “California Pandemic Early Detection and Prevention Institute Initiative” was a proposed amendment to the California Constitution. The initiative would have proposed a 0.75% tax on individuals with an income of over \$5 million for a duration 10 years. All revenue generated by this proposed tax would have been used to fund a new governmental body, the “California Institute for Pandemic Prevention,” which in turn would have been authorized to distribute the funds generated by the initiative tax to pathogen research efforts. The taxes generated by the initiative would have also been distributed as additional funding for various state agencies for the purposes of further pandemic readiness and mitigation efforts.¹⁹ The initiative was ultimately removed from the ballot as a part of a legislative compromise, which made the initiative redundant by other efforts to bolster medical research funding. This was achieved by integrating the California Initiative to Advance Precision Medicine into the California Health and Human Services Agency.²⁰

II. THE LAW

A. Existing Law

The administration of public health and welfare involves a wide range of activities overseen by the state of California and its various agencies. Many of these activities presently include research and health-emergency safeguards and bolstering efforts. The COVID-19 pandemic saw a surge in funding for these agencies, with approximately \$3 billion allocated to the state’s various agencies to see to these efforts.²¹

Generally, it is within the state’s purview execute the administration of the health, safety, and welfare of its citizens, and the State may appropriately levy taxes to facilitate this effort. New taxes may be imposed by legislation, or even by voter initiative. The state of California’s initiative process also generally authorizes constitutional amendments by initiative like the one seen here. Most existing taxes are deposited within the state’s general fund, the proceeds from which are often redistributed or allocated per regular fiscal intervals.²²

¹⁹ *California Pandemic Early Detection and Prevention Institute Initiative (2024)*, Ballotpedia,

[https://ballotpedia.org/California_Pandemic_Early_Detection_and_Prevention_Institute_Initiative_\(2024\)](https://ballotpedia.org/California_Pandemic_Early_Detection_and_Prevention_Institute_Initiative_(2024)).

²⁰ *California to focus on pandemic preparedness and prevention through precision medicine research*, Off. Of. Gov. Gavin Newsom, (Jun. 25, 2024) <https://www.gov.ca.gov/2024/06/25/california-to-focus-on-pandemic-preparedness-and-prevention-through-precision-medicine-research/> (Last visited Oct. 13, 2024) .

²¹ *California Pandemic Early Detection and Prevention Institute Initiative (2024)*, Ballotpedia,

[https://ballotpedia.org/California_Pandemic_Early_Detection_and_Prevention_Institute_Initiative_\(2024\)#cite_ref-sos_6-0](https://ballotpedia.org/California_Pandemic_Early_Detection_and_Prevention_Institute_Initiative_(2024)#cite_ref-sos_6-0).

²² LAO, *The 2022-2023 Budget: Overview of the Spending Plan (Final Version)*, <https://lao.ca.gov/Publications/Report/4616>.

B. Proposed Changes

The initiative would have established a new 0.75% tax applicable to those whose income was over \$5 million dollars a year, made effective for 10 years.²³ The revenue generated from this tax would have funded the California Institute for Pandemic Prevention (“the Institute”), a state agency also created under the initiative. The Institute’s constitutional purpose would have included: “awarding grants related to the development of pathogen-agnostic metagenomic sequencing; supporting the implementation of a pathogen-agnostic metagenomic-sequencing-based disease and pandemic detection system; making grants for public benefit and according to ‘high standards of ethics, privacy, and security’; and supporting state public health authorities and officials to mitigate and prevent future pandemics.”²⁴

The initiative would have also seen the creation of the Independent Scientific Governing Board, which would have been made up of various healthcare and scientific specialists who would be tasked with carrying out the administrative functions of the Institute, including oversight of the Institute’s function and financial performance, issuing reports, and generally implementing whatever policies and regulations it deemed necessary to carry out its functions. The board would make recommendations as to how to allocate the revenue it generated. The initiative would have operated with a wind-down provision towards the end of its 10-year operational window and been permitted to operate passed this 10-year limit so long as funding continued to exist.

The initiative would have created the Community Pandemic Response Fund, for the purpose of “funding state and local public health programs to support pandemic preparedness.”²⁵ This fund would have been primarily distributed among the California Department of Public Health’s various state and local health programs and would require that no local jurisdiction receive “less than 0.2% of available funds.”²⁶

The initiative would have also created the School Disease Prevention Fund with the intent of “funding improvements to the built environment in schools to suppress and prevent the transmission of pathogens by all transmission routes to protect students, staff, and the community.”²⁷ Funds would be appropriated via the Superintendent of Public Instruction and would be exempt from the state’s education spending limits.

C. Path to the Ballot

This proposal began as a voter initiative in 2021, with proponents filing the initiative in September of that year. By November of 2021, the initiative had been certified, allowing signature collection to begin. The initiative had initially failed to gather the requisite signatures by the June 2022 deadline and instead had gathered the amount needed by the following July, allowing the initiative to appear on a potential 2024 ballot. By July 2022, it was certified that the initiative had

²³ Initiative 21-0022A1: “California Pandemic Early Detection and Prevention Act”, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0022A1%20%28Early%20Pandemic%20Prevention%20%29.pdf>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

qualified for the 2024 ballot with well over one million valid signatures.²⁸

One of the chief proponents of this initiative was FTX founder and CEO Sam Bankman-Fried, who is reported to have invested millions into the initiative along with other Silicon Valley executives.²⁹ Bankman-Fried's support of the California initiative was part of a series of other political donations to the Protect Our Future PAC, which shared the same objective of supporting pandemic preparedness efforts across the United States.³⁰

D. Removal from the Ballot

On June 27, 2024, the California Secretary of State reported that the initiative had been formally withdrawn by its proponents as a result of a legislative compromise announced by Governor Newsom. The reported compromise would see the integration of the California Initiative to Advance Precision Medicine, which was enacted in 2015, into the California Health and Human Services Agency. This compromise appears to have had much of the same public policy effect that the initiative's proponents had sought from their own efforts, emphasizing the primacy of pandemic readiness and medical research in future budgetary dealings and policy goals. Interestingly, and perhaps helping to explain the impetus of the proponents to compromise, a major donor to the initiative Sam Bankman-Fried became unavailable as a source of support in November of 2023. Mr. Bankman-Fried was indicted and convicted of fraud and Alameda Research LLC, a company he had been heavily invested in, filed for bankruptcy.³¹ These events left the proponents of the initiative without key financial support to make a push for passage of the proposition through the election season.

III. CONSTITUTIONAL AND STATUTORY ISSUES

States are permitted to raise taxes to fund their governments so that they may provide for the health and welfare of their citizenry.³² The establishment of an income tax to pay for healthcare and medical programs run by the state would fall within the scope of this health and welfare responsibility. While the proposed tax sought to target a specific class of individuals, the state is empowered to do so with a sufficient demonstration of a legitimate interest,³³ and in this case, would likely meet this burden if challenged. Any constitutional challenge to the proposed tax itself would necessitate a challenge of the state's power to raise and collect taxes generally.

²⁸ *California Pandemic Early Detection and Prevention Institute Initiative (2024)*, Ballotpedia, [https://ballotpedia.org/California_Pandemic_Early_Detection_and_Prevention_Institute_Initiative_\(2024\)#cite_ref-sos_6-0](https://ballotpedia.org/California_Pandemic_Early_Detection_and_Prevention_Institute_Initiative_(2024)#cite_ref-sos_6-0).

²⁹ Laura Nelson, *What's the fate of California's pandemic preparedness ballot measure backed by Sam Bankman-Fried?*, Los Angeles Times (Nov. 27, 2023), <https://www.latimes.com/california/story/2023-11-27/californians-against-pandemics-ballot-measure-income-tax-increase-sam-bankman-fried>.

³⁰ Aaron Navarro, *Sam Bankman-Fried donated over \$40 million in the 2022 election cycle. Where did it go?*(Dec. 15, 2022) <https://www.cbsnews.com/news/ftx-sam-bankman-fried-political-donations-2022/>.

³¹ *Id.*

³² U.S. Const. art. I.

³³ U.S. Const. amend XIV.

IV. PUBLIC POLICY ISSUES

A. Pros and Cons of Initiative

By agreeing to withdraw their support for this proposal, proponents of the initiative seem to signal some amount of present satisfaction with the state's current efforts to prepare for the next pandemic. While there may very well be some conceivable shortcomings in the character of current efforts, one could well argue that "something" is better than nothing. This argument requires an assumption, however, that the more complicated provisions of the initiative were in fact more robust than current planning, the truth of which remains to be seen. One could well argue that an already byzantine funding apparatus for state agencies would not benefit from the creation of extra governing boards or other funding pools separate from existing ones upon which current agencies rely heavily. While the added revenue of the initiative's proposed tax may certainly be missed by some, the added complexity to obtaining those funds by the other provisions of the initiative may not be so sorely missed.

If anxieties about the supposed inefficiency of the current system still abound, then it may be argued that the state has missed a necessary chance to better organize its spending before the next crisis. Whether the state of California necessarily acted with all due haste and efficiency in combatting the COVID-19 pandemic likely remains a partisanly divisive issue, confounded by the externalities of the somewhat confused national effort to combat the pandemic and the arising inefficiencies therein. Whether the state of California has learned these lessons as best it can independently, remains a matter of speculation in any case, until it is called upon once again to respond to a similar crisis. For now, the initiative's proponents seem prepared to place their faith in the hands of the compromise struck with the Legislature.

B. Fiscal Impact

The initiative's projected increase in state tax revenues was reported to have ranged from \$500 million to \$1.5 billion annually over a 10-year period.³⁴ This revenue would have been reserved exclusively for the use of the proposed funds at the discretion of the bodies being created by the initiative. Whether this would have remained consistent or been subject to any modification or variation is a matter of speculation. While these taxes would have had the effect of bolstering funding for health and safety programs designed to benefit the public at large, the increase in taxes targeting the state's wealthier earners is naturally speculated to have driven such earners away from California, according to opponents of the initiative.³⁵

³⁴ Legislative Analyst's Office, A.G. File No. 21-0021, at 3, <https://lao.ca.gov/ballot/2021/210510.pdf>.

³⁵ Angela Hart, *Tech titans want the richest Californians to pay for pandemic preparedness*, Los Angeles Times (Apr. 25, 2024), <https://www.latimes.com/california/story/2022-04-25/tech-titans-want-the-richest-californians-to-pay-for-pandemic-preparedness>.

C. Similar Initiatives Likely to Reemerge?

The initiative is unlikely to reemerge in its exact formation, considering the compromise it garnered from the state Legislature. There is no outward indication at this time that proponents are particularly aggrieved that the initiative will not be realized in its precise dimensions. Rather, by the endorsements given to the announcement of the initiative's removal from the ballot³⁶, the state's commitment to furthering the initiative's policy goals by alternate means seems to momentarily satisfy the initiative's objectives. If the current course of the state's operations fails to satisfy a tangible progression towards pandemic readiness, then it may very well be possible that a renewed effort to fund the state's pandemic readiness capabilities could be seen. Crisis response and preemptive health and safety measures, as a matter of good public policy, will likely remain prevalent as a matter of practical importance, and will likely see continued funding in any event. Whether these efforts are seen as a "good enough" remains to be seen, and again, can only be truly tested and evaluated with real-world application.

V. CONCLUSION

The California Pandemic Early Detection and Prevention Initiative, while ultimately removed from the November 2024 ballot, seemed to be sensible enough in its policy aims, if not controversial or even potentially convoluted in its means. While ultimately withdrawn by its proponents, the initiative was able to garner a legislative compromise to the seeming satisfaction of the initiative's general policy goal; a continued emphasis on the state's preparedness and institutional resilience in the face of the next pandemic. While premised on the passage of a new wealth tax, this tax would have been easier justified by the narrow apportionment of its revenues towards highly specific usage with wide benefit to the public. Only time will tell whether or not this policy goal is truly fulfilled by the implementation of currently existing agencies and funding pools, or if removal of this initiative represents a missed opportunity to further prepare for the next global health crisis.

³⁶ Governor Gavin Newsom, Press Release (Jun. 25, 2024) <https://www.gov.ca.gov/2024/06/25/california-to-focus-on-pandemic-preparedness-and-prevention-through-precision-medicine-research/> (last visited Oct. 16, 2024).