

2024

The Right to Stable Employment: Lessons from the U.S. Virgin Islands

Anthony M. Ciolli

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>

Recommended Citation

Anthony M. Ciolli, *The Right to Stable Employment: Lessons from the U.S. Virgin Islands*, 51 Fordham Urb. L.J. 1127 (2024).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol51/iss4/5>

This Editorial is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

THE RIGHT TO STABLE EMPLOYMENT: LESSONS FROM THE U.S. VIRGIN ISLANDS

*Anthony M. Ciolli**

I. Federalist Backdrop.....	1127
II. Innovation in the U.S. Virgin Islands.....	1130
III. The Right to Stable Employment in the U.S. Virgin Islands....	1132
IV. Lessons from the U.S. Virgin Islands Experience.....	1137

I. FEDERALIST BACKDROP

The American system of government is perhaps most defined by federalism — the idea that the states remain sovereign and exercise concurrent or even exclusive authority over certain matters vis-à-vis the federal government. Our federalist system thus provides both a check on the authority of the entire federal government as well as a mechanism to implement original or innovative ideas on a smaller scale. As Justice Louis Brandeis once famously wrote, “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹

This idea of states serving as laboratories has in some ways proven perhaps unduly idealistic. “[S]tate governments have grown immensely large,” as has “[g]overnmental bureaucracy at every level.”² Moreover, “[e]very state legislature is now representing a lot more people than in the past, and state legislative districts are often larger than Congressional

* Practicing Faculty, St. Mary’s University School of Law; Past President, Virgin Islands Bar Association; Chair, Virgin Islands Bar Association Continuing Legal Education Committee; Special Assistant to Hon. Rhys S. Hodge, Chief Justice of the Virgin Islands. The views expressed herein are solely my own and not those of the Judicial Branch of the Virgin Islands, the Virgin Islands Bar Association, or any of their officers or employees.

1. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).
2. Hon. Donald C. Wintersheimer, *Supremacy Clause: Or Leash Law?*, 61 ALB. L. REV. 1575, 1581 (1998).

Districts.”³ Nor does the current political environment favor novel experimentation even at the state level — state governments have become increasingly politically polarized, with political divisions often following an urban-rural divide.⁴ These urban-rural divisions within states perhaps most impair the states’ ability to engage in economic experimentation, given the dramatically different economies of urban and rural areas.⁵ And while differences amongst populations *within* individual states may have increased, differences *between* states have greatly diminished due to Americans adopting a more national identity, facilitated by technological developments such as television and the Internet. As one scholar observed:

Americans are now a people who are so alike from state to state, and whose identity is so much associated with national values and institutions, that the notion of significant local variations in character and identity is just too implausible to take seriously as the basis for a distinct constitutional discourse.⁶

Given these developments, one might naturally expect economic experimentation to simply devolve to even smaller levels of government, such as cities, counties, municipalities, or villages. Yet this has largely not been the case as a practical matter.⁷ This is not due to a lack of desire on the part of cities and other sub-state governments to innovate and adopt policies different than their state government. As one author aptly explained:

For generations, cities were viewed as the source of American’s [sic] most vexing challenges. Today, however, they are increasingly cast as the solution to many of our nation’s most pressing problems. On social and economic issues, cities are celebrated for their innovative and forward-thinking policies. In an era of gridlocked partisanship, local politics are hailed as a glimmer of hope amid America’s democratic dysfunctions. It may have once been common for policymakers to wonder whether cities were capable of governing themselves. Now influential thinkers are openly asking whether it would be better if “mayors ruled the world.”⁸

3. *Changing Landscape of Legislatures: Reduced Presence of Lawyers*, 3 MD. BAR J. 66, 68 (2021).

4. See Kenneth A. Stahl, *Preemption, Federalism, and Local Democracy*, 44 FORDHAM URB. L.J. 133, 145 (2017).

5. See generally Lee Huskey, *Alaska’s Village Economies*, 24 J. LAND RES. & ENV’T L. 435 (2004) (contrasting the economies of urban and rural economies in Alaska).

6. James A. Gardner, *The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761, 818 (1992).

7. See Matthew J. Parlow, *Progressive Policy-Making on the Local Level: Rethinking Traditional Notions of Federalism*, 17 TEMP. POL. & CIV. RTS. L. REV. 371, 381–84 (2008) (discussing preemption as a block to local innovation and experimentation).

8. Rick Su, *Have Cities Abandoned Home Rule?*, 44 FORDHAM URB. L.J. 181, 183–84 (2017).

Ultimately, the biggest obstacle to novel experimentation by cities and other local governments is that federalism, while a defining feature of national government, is not constitutionally required at the sub-state level but only provided at the grace of the state government. Only a fraction of states chose to adopt “a mini federal system in which the state concerns itself with statewide affairs and local matters are constitutionally delegated to local authorities” and “cities acting within the sphere of ‘local’ concern are effectively shielded from state intervention.”⁹ In most states, the state government typically either retains plenary authority over municipal affairs or, even if some sort of “home rule” or local autonomy exists, it is often construed very narrowly by state courts.¹⁰ In such states, city and local governments often no longer even try to experiment with novel laws, knowing that any meaningful innovation may be nullified by the state legislature or — in what is often the worst case scenario — struck down by a state court as violative of the state constitution, thus creating an adverse precedent that may jeopardize local autonomy in other areas.¹¹

That state governments have effectively become too large and complex to innovate, while cities and other local governments either cannot innovate or may only do so in a very narrow set of areas pursuant to strict conditions, has transformed the idea “that the 50 States serve as laboratories for the development of new social, economic and political ideas” from a reality into a myth.¹² However, this was not always the case. As Justice Sandra Day O’Connor observed 40 years ago:

This state innovation is no judicial myth. When Wyoming became a State in 1890, it was the only State permitting women to vote. That novel idea did not bear national fruit for another 30 years. Wisconsin pioneered unemployment insurance, while Massachusetts initiated minimum wage laws for women and minors. After decades of academic debate, state experimentation finally provided an opportunity to observe no-fault automobile insurance in operation.¹³

Yet outside of action on certain hot-button social issues such as same-sex marriage and abortion — which were typically the product of action by state supreme courts and not state legislatures — over the past several decades there has been shockingly little innovation of a comparable magnitude. This may be particularly true with respect to economic issues, where supreme courts have been more reluctant to interpret state constitutions to recognize

9. Hayato Watanabe, *The Municipal Pardon Power*, 118 MICH. L. REV. 687, 693–94 (2020) (internal quotation marks omitted).

10. *See* Su, *supra* note 8, at 199–201.

11. *See* Su, *supra* note 8, at 199–201.

12. *FERC v. Mississippi*, 456 U.S. 742, 788 (1982) (O’Connor, J., concurring).

13. *Id.* at 788–89.

economic rights over the objection of the other two branches of state government.¹⁴ And in the long run, the failure to innovate will necessarily result in further homogenization of the law, since opponents of the status quo in a particular state or locality will find it even more difficult to point to the results of a different policy enacted elsewhere.

Yet declining experimentation at the state and local level does not mean the absence of any meaningful innovation on economic issues within the United States. What may be surprising, however, is the source of much of that innovation: the five inhabited United States territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. It is far beyond the scope of this or any other Essay to outline all the experimentation undertaken by these territories even over the course of the last 20 years, let alone the past century. This Essay, however, tells a story about a single innovation in one territory from which mainland governments should take note: the complete abolition of the employment-at-will doctrine in the U.S. Virgin Islands.

II. INNOVATION IN THE U.S. VIRGIN ISLANDS

The Virgin Islands of the United States, more commonly known as the U.S. Virgin Islands, is a Territory of the United States located in the Caribbean Sea, nearly 1,200 miles away from the mainland United States. The United States acquired the U.S. Virgin Islands — previously known as the Danish West Indies — in 1917 by purchase from Denmark for \$25,000,000 in gold coin.¹⁵ Today, the U.S. Virgin Islands is home to a population of 87,146 people, the overwhelming majority of whom are African American,¹⁶ who possess United States citizenship yet are nevertheless deprived of many fundamental constitutional rights that Americans who reside in the mainland United States often take for granted, such as the right to vote for President and voting members of Congress.¹⁷

While well known as one of the world's preeminent tourist destinations, few Americans realize that the U.S. Virgin Islands has been a hotbed of innovation since becoming part of the United States. For example, the U.S.

14. See Robert A. Kagan et al., *The Business of State Supreme Courts, 1870-1970*, 30 STAN. L. REV. 121, 152–55 (1977) (finding that state supreme courts have voluntarily chosen to accept fewer commercial cases).

15. See Convention Between the United States and Denmark for Cession of the Danish West Indies, Den.-U.S., Aug. 4, 1916, 39 Stat. 1706 (1917).

16. Press Release, U.S. Census Bureau, 2020 Island Areas Censuses Data (Oct. 20, 2022) <https://www.census.gov/newsroom/press-releases/2022/2020-island-areas-us-virgin-islands.html> [<https://perma.cc/HCF4-JNFL>] (“The Black or African American population was the largest race group, with 62,183 people identifying as Black or African American alone.”).

17. See, e.g., Anthony Ciolli & Dana Hrelac, *Third-Class Citizens: Unequal Protection Within United States Territories*, 55 SUFFOLK U. L. REV. 179 (2022).

Virgin Islands has abolished the employment-at-will doctrine.¹⁸ But that is not the extent of its innovation. The U.S. Virgin Islands has, among other things, the distinction of being the only jurisdiction under the United States flag to abrogate the American Rule on attorney's fees in favor of the English Rule, which allocates such fees to the prevailing party;¹⁹ abolish remittitur;²⁰ and enact traffic rules requiring that cars drive on the left rather than the right.²¹ In addition, the U.S. Virgin Islands was one of the very first jurisdictions to adopt no-fault divorce as well as no-fault alimony and no-fault child custody;²² to abolish the long-standing common law tort distinctions between land possessors, invitees, and trespassers;²³ and to hold virtual oral arguments and court appearances (which had been the practice in the Supreme Court of the Virgin Islands for more than a decade prior to the COVID-19 pandemic).²⁴

How the U.S. Virgin Islands has been able to innovate to such a great extent is a topic for another Article. There are, however, several reasons that immediately come to mind. First, the U.S. Virgin Islands is young: it became part of the United States in 1917 and had been steeped in the Danish legal system prior to the transfer, unlike the mainland United States, which had largely followed English traditions.²⁵ Moreover, the territory's legal institutes are even younger: true self-government without federal intervention did not occur until 1968 with the passage of the Virgin Islands Elective Governor Act by Congress,²⁶ and the Judicial Branch of the Virgin Islands did not become wholly independent of the federal courts until 2007.²⁷ From my own personal experience practicing in the U.S. Virgin Islands, I believe that the relative youth of the U.S. Virgin Islands provided it with the benefits of: (1) having substantial experience with operating under principles different than the traditional American or English way of doing things; (2)

18. *See infra* Part III.

19. *See* DaCosta v. DaCosta, 74 V.I. 640, 643–46 (V.I. 2021) (applying V.I. CODE ANN. tit. 5, § 541 1986).

20. *See* Antilles Sch., Inc. v. Lembach, 64 V.I. 400, 427–38 (V.I. 2016).

21. V.I. CODE ANN. tit. 20, § 495 2019; Galloway v. People, 57 V.I. 693, 697 n.2 (V.I. 2012).

22. *See* Garcia v. Garcia, 59 V.I. 758, 772–83 (V.I. 2013) (interpreting V.I. CODE ANN. tit. 33, § 2305 2019 and V.I. CODE ANN. tit. 16, §§ 101–11 2019).

23. *See* Machado v. Yacht Haven U.S.V.I., LLC, 61 V.I. 373, 384–91 (V.I. 2014).

24. *See* REPORT OF THE JUDICIAL COUNCIL OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ON THE VIRGIN ISLANDS SUPREME COURT 19 (2012) (“The courtroom in St. Thomas is equipped with video conferencing technology which facilitates remote appearances by justices and attorneys.”).

25. *See* Joseph T. Gasper II, *Too Big to Fail: Banks and the Reception of the Common Law in the U.S. Virgin Islands*, 46 STETSON L. REV. 295, 314–15 (2017).

26. *See* Virgin Islands Elective Governor Act, Pub. L. No. 90-496, 82 Stat. 837 (1968).

27. *See infra* Part III.

being able to see how certain concepts already operated in the mainland United States; and (3) effectively starting from scratch at a relatively late period of time, allowing for experimentation and change without the need to overhaul existing laws or disregard centuries of precedents.

Second, the government of the U.S. Virgin Islands is small and nimble, with no municipal governments but only a 15-member unicameral elected legislature.²⁸ As noted above, the population of the U.S. Virgin Islands is only approximately 87,000 people, yet the U.S. Virgin Islands is treated in most administrative respects as if it were a state.²⁹ As such, the territorial legislature and courts in effect perform the functions one would expect of those entities in both state and municipal government and remain extraordinarily accessible to the community.³⁰ This is particularly true of the territorial legislature, since unlike state legislatures, members of the territorial legislature are not elected to (often-gerrymandered) districts, but are elected island-wide using a system where all candidates run on the same ballot for seven seats from their island, and the voters on each island are entitled to vote for up to seven candidates, with the top seven aggregate vote-getters winning election.³¹

III. THE RIGHT TO STABLE EMPLOYMENT IN THE U.S. VIRGIN ISLANDS

I now turn to the heart of this Essay: introducing the Virgin Islands Wrongful Discharge Act (VIWDA). The VIWDA was enacted by the territorial legislature in 1986³² and has remained largely unchanged except for a largely non-substantive amendment in 1996.³³ The substantive provision of the VIWDA, simply titled “Grounds for Discharge,” reads, in its entirety, as follows:

- (a) Unless modified by union contract, an employer may dismiss any employee:
 - (1) who engages in a business which conflicts with his duties to his employer or renders him a rival of his employer;
 - (2) whose insolent or offensive conduct toward a customer of the employer injures the employer’s business;
 - (3) whose use of intoxicants or controlled substances interferes with the proper discharge of his duties;

28. See V.I. CODE ANN. tit. 2, § 102 1972.

29. See, e.g., *Balboni v. Ranger Am. of the V.I., Inc.*, 70 V.I. 1048, 1071 (V.I. 2019).

30. See, e.g., *Lewis v. Legislature of the V.I.*, 44 V.I. 162, 163–65 (V.I. Super. Ct. 2002) (recognizing that the Virgin Islands Legislature handles local zoning requests).

31. See V.I. CODE ANN. tit 2, § 102 1972.

32. See 1986 V.I. Sess. Laws 378.

33. See 1996 V.I. Sess. Laws 8.

- (4) who wilfully [sic] and intentionally disobeys reasonable and lawful rules, orders, and instructions of the employer; provided, however, the employer shall not bar an employee from patronizing the employer's business after the employee's working hours are completed;
- (5) who performs his work assignments in a negligent manner;
- (6) whose continuous absences from his place of employment affect the interests of his employer;
- (7) who is incompetent or inefficient, thereby impairing his usefulness to his employer;
- (8) who is dishonest; or
- (9) whose conduct is such that it leads to the refusal, reluctance or inability of other employees to work with him

(b) The Commissioner may by rule or regulation adopt additional grounds for discharge of an employee not inconsistent with the provisions enumerated in subsection (a) of this section.

(c) Any employee discharged for reasons other than those stated in subsection (a) of this section shall be considered to have been wrongfully discharged; however, nothing in this section shall be construed as prohibiting an employer from terminating an employee as a result of the cessation of business operations or as a result of a general cutback in the work force due to economic hardship, or as a result of the employee's participation in concerted activity that is not protected by this title.³⁴

The language of the VIWDA appears rather clear. Subsection (a) essentially abolishes the doctrine of employment-at-will in the U.S. Virgin Islands by providing a set of only nine specifically enumerated reasons to "dismiss any employee."³⁵ Subsection (b) permits the Virgin Islands Commissioner of Labor to establish additional permissible grounds for discharge,³⁶ but the Commissioner has not adopted any such additional grounds in the nearly 40 years since the territorial legislature enacted the VIWDA. Subsection (c) then provides that any individual discharged for any other reason has been wrongfully discharged, while establishing a safe harbor for situations where the employer has ceased business operations or engaged in layoffs due to "economic hardship."³⁷

The VIWDA's teeth, however, come in its enforcement provisions. The VIWDA grants an employee two avenues to obtain redress if wrongfully discharged. The employee may initiate an administrative proceeding with the Virgin Islands Department of Labor, where the employee may obtain the

34. V.I. CODE ANN. tit. 24, § 76 1986.

35. *Id.* § 76(a).

36. *See id.* § 76(b).

37. *Id.* § 76(c).

remedy of reinstatement with back pay.³⁸ However, the VIWDA also provides an employee with the option of immediately initiating a judicial proceeding — *without* first needing to bring an administrative action in the Department of Labor.³⁹ Significantly, the remedies authorized by a court in a wrongful discharge case are extraordinarily broader, in that the employee may obtain “compensatory and punitive damages,” and the court “shall award to the plaintiff reasonable attorney’s fees and costs of the action, in addition to any judgment in favor of the plaintiff.”⁴⁰

Despite the extraordinary nature of these provisions, the significance of what the territorial legislature had done was not fully appreciated for nearly 30 years. Unlike other states and territories, the U.S. Virgin Islands lacked an independent territorial judicial branch until the territorial legislature established the Supreme Court of the Virgin Islands, which then assumed jurisdiction on January 29, 2007.⁴¹ Prior to this, only a territorial trial court existed — and appeals from that territorial trial court were heard by the federal District Court of the Virgin Islands, with a further appeal permitted to the United States Court of Appeals for the Third Circuit.⁴² During this period where federal courts possessed the final word on questions of U.S. Virgin Islands law:

[t]he relationship between the local courts of the U.S. Virgin Islands, the District Court of the Virgin Islands, and the U.S. Court of Appeals for the Third Circuit [was] defined by the ‘tension’ stemming from the federal courts’ misinterpretation of U.S. Virgin Islands law as well as the wholesale imposition of [federal law] on the territorial court system.⁴³

The challenges faced by the U.S. Virgin Islands during this period — largely parallel those faced by municipalities today in states where state courts, disconnected from the municipality, possess the authority to construe and invalidate municipal laws.⁴⁴

Finding its place among the laws of the U.S. Virgin Islands, whose plain text and legislative intent were disregarded by federal judges, the VIWDA

38. *See id.* § 77.

39. *See id.* § 79 (authorizing a private right of action for wrongfully-terminated employees); *see also* Hess Oil V.I. Corp. v. Richardson, 894 F. Supp. 211, 216 (D.V.I. 1995) (“There is no language in the WDA which requires the employee first to file a claim with the [Department of Labor] and then exhaust that avenue before bringing an action in court.”).

40. V.I. CODE ANN. tit. 24, § 79 1986.

41. *See* Hypolite v. People, 51 V.I. 97, 101 (V.I. 2009) (citing V.I. CODE ANN. tit. 4, § 32 2006).

42. *See id.*; *see also* Anthony Ciolli, *Judicial Antifederalism*, 91 FORDHAM L. REV. 1695, 1706 (2023).

43. Ciolli, *supra* note 42, at 1707.

44. *See* Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 86 DENV. U. L. REV. 1337, 1360–61 (2009).

was improperly imbued with mainland sensibilities and values. In one of the earliest cases interpreting the VIWDA, the District Court of the Virgin Islands — without citing to the text of the statute, its legislative history, or any legal authority whatsoever — concluded that claims under the VIWDA were subject to the same standards of proof as federal employment discrimination claims brought under Title VII of the federal Civil Rights Act.⁴⁵ As such, the District Court determined that the burden-shifting standards for Title VII claims as set forth by the Supreme Court of the United States in *McDonnell Douglas Corporation v. Green*⁴⁶ extended to claims under the VIWDA.⁴⁷

The District Court’s grafting of federal case law interpreting Title VII onto the VIWDA effectively gutted the statute, transforming it from an extraordinary law abolishing employment-at-will to a garden-variety civil rights statute. In 2015, however, the Supreme Court of the Virgin Islands stepped in to correct the misunderstanding. In one of its seminal decisions, *Rennie v. Hess Oil V.I. Corporation*, the Virgin Islands Supreme Court rejected the longstanding federal interpretation of the VIWDA, concluding that they were “wrongly decided, and that *McDonnell Douglas* and other case law interpreting the federal Civil Rights Act are irrelevant in determining whether a plaintiff properly pleaded a claim under the [VIWDA].”⁴⁸

In doing so, the Supreme Court of the Virgin Islands would reject this construction, and breathe life into VIWDA, albeit nearly two decades after the federal interpretation had become entrenched. The Virgin Islands Supreme Court recognized that the VIWDA “was not modeled on the laws of any other jurisdiction — and, in fact, has not been adopted by any other state or territory.”⁴⁹ As such, rather than interpreting the VIWDA in the same manner as a purportedly similar federal statute, the Virgin Islands Supreme Court adopted a very intuitive approach: “simply apply the plain language of the statute.”⁵⁰

What, then, is needed to establish a claim for wrongful discharge under VIWDA? The test adopted by the Virgin Islands Supreme Court is shockingly simple: the plaintiff only needs to plead (and ultimately prove)

45. See *Rajbahadoorsingh v. Chase Manhattan Bank*, 168 F. Supp. 2d 496, 503–04 (D.V.I. 2001).

46. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

47. See *Rajbahadoorsingh*, 168 F. Supp. 2d at 504–05 (internal citations and quotation marks omitted).

48. *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 543 (V.I. 2015).

49. *Id.* at 545.

50. *Id.* at 543.

that the defendant was his employer and discharged him.⁵¹ Because *all* discharges under the VIWDA are presumed wrongful, the traditional distribution of the burden of proof, as informed by *McDonnell Douglas*, is disrupted. While the defendant may raise as a defense that it discharged the plaintiff for one of the permissible grounds set forth in the VIWDA, it is the defendant — and not the plaintiff — that bears the burden of proof, and the plaintiff is under absolutely no obligation to try to anticipate that defense in the complaint.⁵²

There is, of course, another important component of the VIWDA: what constitutes the “discharge” of an “employee” by an “employer”? Again, the Virgin Islands Supreme Court has interpreted the VIWDA extraordinarily liberally, in line with the legislative intent to abolish employment-at-will in the U.S. Virgin Islands. As such, the Virgin Islands Supreme Court has held that a “discharge” under the VIWDA includes not only traditional firings, but also demotions, transfers to other positions, and reduced work hours.⁵³ It has also interpreted the words “employee” and “employer” liberally, and determined that the territorial legislature intended for an “employer” to be not just an employer as that term is traditionally understood, but to also encompass those who directly or indirectly act in the interests of that employer.⁵⁴ Thus, a hotel, a management company, and a human resources consulting firm were *all* deemed to be the “employer” of a single worker hired by the management company to work at the hotel, who was then terminated by the human resources consulting firm.⁵⁵ All three were deemed jointly and severally liable for her wrongful discharge.⁵⁶

Without expressly stating so, the Supreme Court of the Virgin Islands effectively ruled that the Legislature of the Virgin Islands created a right to stable employment when it enacted the VIWDA. This is amply supported not just by the plain text of the VIWDA itself, but also by the legislative history of the VIWDA, in that “the primary sponsor of the bill, Senator Adelbert Bryan, was concerned that workers — particularly those in the tourism industry — might be discharged for not having the right hairstyle, or for returning to the place of business to socialize with customers after work.”⁵⁷ Senator Viridin Brown, another supporter of the bill, “indicated that

51. *See id.* at 544.

52. *See id.*

53. *See, e.g., id.* at 545; *Pedro v. Ranger Am. of the V.I., Inc.*, 63 V.I. 511, 520 (V.I. 2015).

54. *See Atlantic Hum. Res. Advisors, LLC v. Espersen*, 76 V.I. 583, 600–14 (V.I. 2022).

55. *Id.*

56. *See id.* at 630–31.

57. *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 545 (V.I. 2015).

the purpose of the [VIWDA] was to provide local employees with legal recourse in the event they were discharged ‘on the whim of an employer.’”⁵⁸

What, then, constitutes the right to stable employment? In essence, the right to stable employment is a right to economic security. Once employed, an employee cannot be fired, demoted, have hours cut, wages reduced, or anything else that impairs employment — unless, of course, they engage in the limited number of activities that would warrant such a sanction, or their employer is engaging in a general workforce reduction due to economic hardship.⁵⁹ And if employment is interfered with without just cause, an employee is entitled not only to reinstatement, but back pay, attorney’s fees, and even punitive damages — not just against their actual employer, but any third parties that acted along with their employer.⁶⁰ It is effectively an employee’s right to live their life without the worry that their livelihood may be impaired simply because their employer disapproves of their hairstyle, or how they spend their leisure time, or what they post on social media.

IV. LESSONS FROM THE U.S. VIRGIN ISLANDS EXPERIENCE

The U.S. Virgin Islands is of course not the only United States jurisdiction said to have abolished employment-at-will, with Montana and Puerto Rico having adopted statutes that have had similar effects.⁶¹ The VIWDA, however, has gone substantially further than the statutes adopted by those other jurisdictions by placing the burden almost entirely on the employer, imposing liability on all those who assist the employer as opposed to only the employer itself, and crafting extraordinarily narrow permissible grounds for discharge.⁶² This has, in effect, codified a right to stable employment in the U.S. Virgin Islands.

But what can state, municipal, and other local governments seeking to similarly establish a right to stable employment within their borders learn from U.S. Virgin Islands? Certainly, the U.S. Virgin Islands is a special jurisdiction that has been uniquely situated to not only innovate, but to do so on a large scale.⁶³ However, this does not mean that its experience with

58. *Id.*

59. *See supra* Part III.

60. *See supra* Part III.

61. *See, e.g.,* Jorge M. Farinacci-Fernos, *The Search for a Wrongful Dismissal Statute: A Look at Puerto Rico’s Act No. 80 as a Potential Starting Point*, 17 EMP. RTS. & EMP. POL’Y J. 125, 127 (2013); William R. Corbett, *Firing Employment at Will and Discharging Termination Claims from Employment Discrimination: A Cooperative Federalism Approach to Improve Employment Law*, 42 CARDOZO L. REV. 2281, 2298 (2021).

62. *See supra* Part III.

63. *See supra* Part II.

codifying a right to stable employment through the VIWDA cannot be effectively modeled by mainland jurisdictions.

First, the VIWDA — and particularly how it has been interpreted by the federal and territorial courts over the last several decades — establishes a blueprint for *how* to enact a law providing for a right to stable employment. The VIWDA is a remarkably simple statute, which says what it means in plain language. The statute does not use legal jargon, establish complex burden-shifting rules, or provide a lengthy list of exclusions from its scope.⁶⁴ Nor does the statute erect barriers to its enforcement: plaintiffs possess the right to choose between an administrative or court proceeding, and the damages one may recover are extraordinarily broad, including both attorney's fees and punitive damages.⁶⁵ The statute essentially means what it says and says what it means.

Second, I have found no evidence that the VIWDA has resulted in the parade of evils often invoked when changes to the very idea of employment-at-will are proposed. It does not appear that any employers have left the U.S. Virgin Islands because of these expanded protections. Nor does it appear that VIWDA has incentivized the filing of so many frivolous or nonmeritorious lawsuits as to strain the local court system. It would appear, then, that while the VIWDA may be legally revolutionary, it has not actually disrupted the economy of the U.S. Virgin Islands to any observable degree. In other words, I believe the system established by the VIWDA works as intended in practice.

It may ultimately be the case that the right to stable employment might not migrate past the shores of the U.S. Virgin Islands, or that its implementation in the mainland United States might result in consequences that have not occurred in the U.S. Virgin Islands. This, however, is the very nature of the experimentation envisioned by Justice Brandeis: the experiment has worked in the U.S. Virgin Islands, and those state and local governments paying attention may wish to replicate it elsewhere.

64. *See supra* Part III.

65. *See* V.I. CODE ANN. tit. 24, § 79 1986.