

Can I Sue my State Government Employer for Violating my USERRA Rights?

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- 1.1.1.7—USERRA applies to state and local governments
- 1.4—USERRA enforcement
- 1.8—Relationship between USERRA and other laws/policies

As I (Wright) have explained in Law Review 18070 (August 2018) and other articles, it is difficult to enforce the Uniformed Services Employment and Reemployment Rights Act (USERRA) against a State government employer. If your employer is a State government agency and the employer has violated your rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), you cannot sue the State in Federal court because of the 11th Amendment of the United States Constitution.⁴

¹We invite the reader's attention to <http://www.roa.org/lawcenter>. You will find more than 2300 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics.

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⁴See *Velasquez v. Frapwell*, 160 F.3d 389 (7th Cir. 1998).

If you sue the State government employer in State court, you will likely be faced with a State defense of “we have sovereign immunity, and you cannot sue us.” The purpose of this article is to do a 50-State survey of State statutes and State court decisions, to determine which States permit and which States forbid State court lawsuits against State government employers for violating USERRA. If we could not find a case dealing specifically with USERRA, we have cited cases dealing with State sovereign immunity generally.

We ask the readers (especially attorneys) to help us in identifying errors or omissions in this article and to help us to keep the article updated as there are new developments in the State courts and State legislatures. We will publish corrections and updates to this article, as necessary.

Under current law, the best way to enforce USERRA against a State government employer is to file a formal written USERRA complaint against the State with the Veterans’ Employment and Training Service of the United States Department of Labor (DOL-VETS) and then to request that DOL-VETS refer your case file to the United States Department of Justice (DOJ). If DOJ finds your case to have merit, it may file suit against the State in the appropriate federal district court *in the name of the United States*, as plaintiff.⁵ DOJ has used that approach successfully against the State of Alabama and the State of Nevada.⁶ The limitation on this approach is that DOJ may deny your request that it become involved for any number of reasons.

If DOJ has denied your request to file suit against the State government employer in the name of the United States, or if you cannot get to DOJ because you bypassed DOL-VETS, do not waste your time and money suing the State in State court unless you have at least an arguable claim (based on a State statute or a State court decision) that the State has waived sovereign immunity to permit a suit of this nature. There is a time to “stop throwing good money after bad.”

The other way to enforce USERRA against a State government employer is through section 4323(b)(2) of USERRA, which provides: “In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction *in accordance with the laws of the State.*”⁷

What is the meaning of the phrase “in accordance with the laws of the State?” There are two possible interpretations:

- a. You can sue the State in State court if State law permits such a suit.
- b. You can sue the State in State court regardless of whether the State law permits lawsuits against the State, because Congress has decided that such lawsuits are

⁵38 U.S.C. 4323(a)(1) (final sentence).

⁶*United States v. Ala. Dep’t of Mental Health and Mental Retardation*, 673 F.3d 1320 (11th Cir. 2012); *United States v. Nevada*, 817 F. Supp. 2d 1230 (D. Nev. 2011).

⁷38 U.S.C. 4323(b)(2) (emphasis supplied).

permitted. We must look to the State law only to determine *in which State court* to bring the lawsuit.⁸

If State law permits you to sue the state in state court, section 4323(b)(2) of USERRA is meaningless. If State law permits such a suit, you do not need permission from Congress to bring it. The rules of statutory construction do not favor an interpretation that renders a whole subsection meaningless.⁹ Accordingly, we believe that the second interpretation is the correct one.

Recently (December 2016), the Virginia Supreme Court agreed with the second interpretation of section 4323(b)(2) but then held:

On appeal, Clark [the Virginia State Police (VSP) officer who claimed that the VSP had unlawfully denied him a promotion based on his Army Reserve obligations] contends that the [State] trial court misapplied sovereign-immunity principles and thus erred in dismissing his USERRA claim. The United States, appearing as amicus, concurs with Clark and urges us to hold that the Commonwealth's sovereign immunity has been lawfully abrogated by 38 U.S.C. 4323(b)(2). The VSP responds that the trial court correctly applied sovereign-immunity principles and had no choice but to dismiss the USERRA action. We hold that the trial court properly dismissed Clark's USERRA claim based on the Commonwealth's sovereign immunity.¹⁰

The 11th Amendment has made it difficult or impossible to enforce the Fair Labor Standards Act (FLSA)¹¹ against many state governments. Accordingly, Congress amended the FLSA to require state courts to hear and adjudicate FLSA claims against state government agencies and to enforce the FLSA. The United States Supreme Court declared that FLSA amendment to be unconstitutional.¹²

Does that mean that section 4323(b)(2) of USERRA is unconstitutional if it means that the state courts *must* enforce USERRA against state government agencies? In our opinion, no. We believe that *Alden v. Maine* is distinguishable. But the Supreme Court of Virginia and several other courts have explicitly rejected this argument, holding *Alden v. Maine* to be controlling.

⁸As *amicus curiae* (friend of the court) in the Virginia Supreme Court and the New Mexico Supreme Court, DOJ has argued for this interpretation. Please see Law Review 16124 (December 2016).

⁹If possible, each word or phrase has meaning. The law does not favor an interpretation that renders meaningless a word or a whole section or subsection. See <https://vdocuments.site/documents/list-of-the-canons-of-statutory-interpretation.html>.

¹⁰*Clark v. Va. Dep't of State Police*, 793 S.E.2d 1 (Va. 2016), *cert. denied*, 138 S. Ct. 500 (2017).

¹¹The FLSA is the federal statute that requires employers, including state governments, to pay their employees at least the federal minimum wage and to pay overtime at 150% of the regular rate when a non-exempt employee works more than 40 hours in a week.

¹²*Alden v. Maine*, 527 U.S. 706 (1999).

We appreciate that DOJ has filed *amicus curiae* (friend of the court) briefs in the Virginia Supreme Court and several other State courts arguing that section 4323(b)(2) of USERRA requires the State courts to hear and adjudicate claims that State government agencies have violated USERRA, without regard to conflicting State claims of sovereign immunity. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), has made the same argument in *amicus* briefs that it has filed. But the fact remains that no State high court has accepted that argument. Except in a handful of States where the legislature has enacted legislation explicitly waiving sovereign immunity and permitting State court USERRA suits against State agencies that violate USERRA, the only practicable way for a USERRA plaintiff to obtain justice is by getting DOJ to file the lawsuit in Federal court in the name of the United States, as plaintiff. Accordingly, DOJ needs to give priority to USERRA suits against State agencies, as employers.

A possible interpretation of *Seminole Tribe of Florida* is that a statute of Congress based on constitutional authority that pre-dates 1795 (when the 11th Amendment was ratified) cannot abrogate the 11th Amendment immunity of States. Under this interpretation, any statute that is based on one of the 18 clauses of Article I, Section 8 of the Constitution (ratified in 1789) cannot overcome the 11th Amendment (ratified in 1795). On the other hand, a Federal statute that is based on Section 5 of the 14th Amendment (ratified in 1868) can overcome the 11th Amendment, because 1868 was after 1795.

We believe that the above interpretation of *Seminole Tribe* is overly simplistic and incorrect. If a federal statute is based on a clause of Article I, Section 8 that is *central to the role of the Federal Government, rather than the States, the statute can abrogate the 11th Amendment immunity of states*.

The Federal Bankruptcy Code is based on Clause 4 of Article I, Section 8, and that clause gives Congress the authority “To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.” In a case decided ten years after *Seminole Tribe*, the Supreme Court upheld, over an 11th Amendment challenge, the power of Congress, under the Bankruptcy Code, to force State government entities to respect the power of federal courts to discharge debts owed to State agencies.¹³

Nothing is more central to the role of the Federal Government, rather than the states, than national defense. Accordingly, we believe that *Velasquez v. Frapwell* was wrongly decided by the 7th Circuit. We think that Congress should reconsider the 1998 amendment. Congress should reaffirm that an individual claiming USERRA rights against a State government employer can sue the State in Federal court, in his or her own name and with his or her own lawyer. This will set up a constitutional question that the Supreme Court will be forced to answer. The States must not be allowed to hide behind hoary doctrines of sovereign immunity and to escape from the obligation to comply with USERRA.

¹³*Central Va. Cmty. Coll. v. Katz*, 546 U.S. 356 (2006).

But for the time being the only way to enforce USERRA against a State government employer is by getting DOJ to sue the State, in the name of the United States as plaintiff, unless the State has waived sovereign immunity. Accordingly, this article answers the following question for each state: **If a state agency employer violates USERRA, is it possible to sue the state in state court and get the court to hear and adjudicate the claim?**

Alabama

No. *See Larkins v. Dept't of Mental Health and Mental Retardation*, 806 So. 2d 358 (Ala. 2001).

Alaska

Probably. "A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in a state court that has jurisdiction over the claim." ALASKA STAT. § 09.50.250. The statute lists 5 instances in which an individual cannot bring a suit against a state, and the USERRA is not listed as such an instance. *Id. See also State v. Carlson*, 270 P.3d 755 (Alaska 2012).

Arizona

Probably. The Arizona Supreme Court abolished state sovereign immunity in 1963. *See Stone v. Ariz. Highway Comm'n*, 281 P.2d 107 (Ariz. 1963). In response, the Arizona legislature reinstated state sovereign immunity for certain state actions that include "fundamental government policy." ARIZ. REV. STAT. ANN. § 12-820.01 (2002).

The general rule is that immunity applies to policy-related duties but does not apply to duties that amount only to implementing legislative policies. *See Pima Cnty v. State*, 174 Ariz. 850 P.2d 115 (Ariz. Ct. App. 1992).

Please note that in Arizona it is necessary to give a State agency administrative notice of a claim, as a condition precedent for suing the State agency. ARIZ. REV. STAT. ANN. § 12-821.01.A (2003).

Arkansas

No. "The State of Arkansas shall never be made defendant in any of her courts." ARK. CONST. of 1874, art. 5, §20. *See also Ark. Dep't of Veterans Affairs v. Mallett*, 549 S.W.3d 351 (Ark. 2018); *Bd. Tr. of the Univ. Ark. v. Andrews*, 535 S.W.3d 616 (Ark. 2018).

The Supreme Court of Arkansas has recognized that a claim of sovereign immunity may be overcome in only three circumstances: (1) the State is the moving party seeking a specific relief; (2) an act of the legislature has created a specific waiver of sovereign immunity; and (3) the State agency is acting illegally or the State agency officer refuses to do a purely ministerial action required by the statute. *Ark. Dep't of Cmty. Corr v. City of Pine Bluff*, 425 S.W.3d 731

(Ark. 2013). A USERRA case against a state agency does not seem to fall into any of these categories.

California

Yes. *See Lucas v. Cal. State. Univ. Monterey Bay*, No. H030585, 2008 WL 116696 (Ca. Ct. App. Jan. 14, 2008).

Colorado

Probably not. “A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant” except in limited circumstances as outlined in the statute. COL. REV. STAT. ANN. § 24-10-106; *see Robinson v. Colo. State Lottery Div.*, 179 P.3d 998 (Colo. 2008).

Connecticut

Probably not. *See Chief Info. Officer v. Computers Pus Ctr., Inc.*, 74 A.3d 1242 (Conn. 2013); *Columbia Air Serv., Inc. v. Dep’t of Transp.*, 977 A.2d 636 (Conn. 2009).

In *Johnson v. Dep’t of Children and Families*, Johnson asserted a claim under USERRA. CV176072016S, 2018 WL 79398, *1 (Conn. Super. Ct. Jan. 18, 2018). However, Johnson voluntarily withdrew the claim after DCF filed an objection, asserting that the action was barred by the Eleventh Amendment Immunity. *Id.*

Delaware

No. *See Janowski v. Div. of State Police*, 981 A.2d 1166 (Del. 2009).

Florida

No. *See Dep’t of Highway Safety and Motor Vehicles v. Hightower*, 306 So.3d 1193 (Fla. Dist. Ct. App. 2020).

Georgia

No. *See Anstadt v. Bd. of Regents of the Univ. Sys. of Ga.*, 693 S.E.2d 868 (Ga. Ct. App. 2010).

Hawaii

Probably. *See HAW. REV. STAT. § 661-1. See also Sierra Club v. Dep’t of Transp.*, 202 P.3d 1226 (Haw. 2009).

Idaho

Yes. See IDAHO CODE § 6-903.

Illinois

No. See *Mowen v. Dep't of Veterans Affairs*, No. 4-12-0603, 2013 WL 1914323 (Ill. App. Ct. May 7, 2013).

Section 4 of article XIII of the Illinois Constitution of 1970 abolished sovereign immunity “[e]xcept as the General Assembly [might] provide by law.” The general assembly then restored sovereign immunity by passing the State Lawsuit Immunity Act, providing statutory exceptions. 745 ILL. COMP. STAT. ANN. 5/0.01-1.5. The Illinois Human Rights Act did not waive sovereign immunity. 775 ILL. COMP. STAT. ANN. 5/1-101 to 10-104; *Mowen v. Dep't of Veterans Affairs*, No. 4-12-0603, 2013 WL 1914323 (Ill. App. Ct. May 7, 2013).

Indiana

Yes. See *Barker v. Off. Of Adjutant Gen.*, 907 N.E.2d 574 (Ind. Ct. App. 2009).

See also IND. CODE § 34-13-3-0.1 – 34-13-3-25. A plaintiff who has been injured by the actions of the State of Indiana or a State employee, in the course of his or her State employment, can file and prosecute an action against the State under the Indiana Tort Claims Act (ITCA). The ITCA typically applies to tort claims, such as claims that State employees were negligent in the operation of State motor vehicles, but the ITCA seems to be broad enough to apply to suits by State employees, former State employees, or unsuccessful applicants for State employment that their USERRA rights were violated.

The ITCA requires certain prerequisites to suit, such as filing administrative claims, and it limits the liability of the State to maximum dollar amounts. Subject to these conditions and limitations, the Indiana courts will hear and adjudicate such claims.

Iowa

Yes. See IOWA. CODE § 669.4.

Kansas

Yes. See KAN. STAT. ANN. § 75-6104.

Kentucky

No. See *Comair, Inc. v. Lexington-Fayette Urban Cnty. Airport Corp.*, 295 S.W.3d 91 (Ky. 2009).

Louisiana

Yes. *See Soulier v. Hood Container of La., LLC*, 287 So.3d 737 (La. Ct. App. 2019). *See also* LA. CONST. ART. XII, § 10(A); LA. STAT. ANN. § 401-426.

Maine

No. *See* ME. REV. STAT. ANN. tit. 14 § 8103. There is no waiver for USERRA expressly provided for by statute.

See e.g. Perry v. Dean, 2017 ME 35 (Me. 2017).

Maryland

Yes. *See* MD. CODE ANN., STATE PERS. & PENS. § 14-103.

Massachusetts

No. *See* MASS. GEN. LAWS ANN. ch. 258 § 2. It has been held that the Massachusetts Tort Claims Act (MTCA) is the only waiver of sovereign immunity of the Commonwealth of Massachusetts, and a claim under USERRA falls outside the scope. *See Green v. Commonwealth*, 435 N.E.2d 362 (Mass. App. Ct. 1982).

Michigan

No. *See* MICH. COMP. LAWS ANN. §§ 691.1401 - .1419. *See e.g. Nawrocki v. Macomb Cnty. Road Comm'n*, 615 N.W.2d 702 (Mich. 2000); *Lash v. Traverse City*, 735 N.W.2d 628 (Mich. 2007).

Minnesota

Yes. MIN. STAT. ANN. § 1.05. *See also Breaker v. Bemidji State Univ.*, 899 N.W.2d 515 (Minn. Ct. of App. 2017); *Breaker v. Bemidji State Univ.*, No. A18-0899, 2019 WL 1510687 (Apr. 8, 2019).

Mississippi

Yes. *See* MISS. CODE. ANN. § 11-46-5; *Webster v. Miss. Dep't of Wildlife, Fisheries & Parks*, 257 So.3d 277 (Miss. 2018).

Missouri

Maybe. *See* MO. ANN. STAT. § 537.600; *Newsome v. Kan. City, Mo. Sch. Dist.*, 520 S.W.3d 769 (Mo. 2017). *But see* MO. ANN. STAT. § 40.490.

Depends on how you read the statutes. There is a case pending right now.

Montana

Yes. MONT. CODE. ANN. §§ 10-1-1001(3)(a), 10-1-1004, 10-1-1021.

Nebraska

Yes. NEB. REV. STAT. § 55-161.

Nevada

No. See NEV. REV. STAT. § 41.032; *Martinez v. Maruszczak*, 168 P.3d 720 (Nev. 2007); *Univ. of Nev., Reno v. Stacey*, 997 P.2d 812 (Nev. 2000).

New Hampshire

Probably. See N.H. REV. STAT. §§ 541-B:2, 541-B:9, 541-B:9-a, and 541-B:19. See also *Mahan v. N.H. Dep't of Administrative Services*, 693 A.2d 79 (N.H. 1997).

New Jersey

Yes. See N.J. STAT. ANN. § 10:5-12; *Johnson v. Bd. of Review, Dep't of Labor*, No. A-4041014T2, 2016 WL 3263253 (N.J. Super. Ct. App. Div. June 15, 2016).

New Mexico

Yes, but only for *National Guard* members. N.M. STAT. ANN. § 20-4-7.1; *Ramirez v. State, CYFD*, 372 P.3d 497 (N.M. 2016).

New Mexico law provides: "The rights, benefits, and protections of the federal Uniformed Services Employment and Reemployment Rights Act shall apply to a *member of the National Guard* ordered to federal or state active duty." N.M. STAT. ANN. § 20-4-7.1. (emphasis added). The State has not waived sovereign immunity for USERRA claims brought by members of the other branches. See *Id.* § 41-4-4.

Phillip Ramirez was a member of the New Mexico Army National Guard and a civilian employee of the New Mexico Department of Children, Youth & Families. *Ramirez*, 372 P.3d at 500. He left his civilian job when he was called to active duty and deployed to Iraq, where he was wounded in action. *Id.* He returned to New Mexico when he was released from active duty, and he made a timely application for reemployment. *Id.* He was reemployed only briefly and then fired. *Id.*

Ramirez retained private counsel and sued in State court alleging a USERRA claim for monetary relief and other Federal and State claims. *Id.* In the trial court, he prevailed on jurisdiction and on the merits. *Id.* The trial judge held that section 20-4-7.1 amounted to an effective waiver of

sovereign immunity and, reaching the merits, held for Ramirez. *Id.* The State of New Mexico appealed. *Id.*

New Mexico's intermediate appellate court held that waivers of sovereign immunity must be strictly construed and that section 20-4-7.1 did not clearly and unambiguously waive sovereign immunity. *Id.* at 500-01. The intermediate appellate court also considered and rejected the argument that Federal law (USERRA) commanded the State courts to hear and adjudicate USERRA claims against State agencies as employers. *Id.* at 501. The intermediate appellate court held that USERRA was unconstitutional as far as it commanded the State courts to hear and adjudicate these claims. *Id.*

Ramirez applied to the New Mexico Supreme Court for certiorari (discretionary review), which the high court granted. *Id.* The State Supreme Court reversed the intermediate appellate court on the question of the alleged ambiguity of section 20-4-7.1. *Id.* at 507. The high court held that the legislative intent to waive sovereign immunity was expressed clearly enough and that section 20-4-7.1 effectively waived the sovereign immunity of the State. *Id.* Having so held, the State Supreme Court did not reach the question of whether USERRA constitutionally required State courts to hear and adjudicate USERRA claims against State agencies.

It should be noted that Ramirez is a member of the Army National Guard (now retired). If he had been a member of the Army Reserve, the Air Force Reserve, the Navy Reserve, the Marine Corps Reserve, or the Coast Guard Reserve the outcome likely would have been different.

New York

Yes. *See* N.Y. CT. CLMS. LAW § 8; *Wang v. N.Y. State Dep't of Health*, 966 N.Y.S.2d 327 (N.Y. 2013).

North Carolina

Probably not. While North Carolina has waived sovereign immunity for tort claims, it is unlikely that the waiver applies to USERRA claims by state employees. *See* N.C. GEN. STAT. § 143-291; *Guthrie v. N.C State Ports Auth.*, 299 S.E.2d 618 (N.C. 1983).

North Dakota

Yes. *See Bulman v. Hulstrand Construction Co., Inc.*, 521 N.W.2d 632 (N.D. 1994).

Ohio

Yes. OHIO REV. CODE ANN. § 5903.02.

Oklahoma

Yes. The Legislature waived sovereign immunity for losses resulting from the State or a political subdivision's torts or its employees' torts, subject to 37 exceptions. See OKLA. STAT. tit. 51 §§ 152.1, 153(A); 155.

Oregon

No. See OR. REV. STAT. §§ 30.260 - 30.300.

The Oregon Tort Claims Act waives sovereign immunity in only three instances:

- a. Personal injury or death was caused by negligence where the governmental entity was at fault.
- b. Injury or death in a vehicle accident due to the actions of a government employee in the course of his or her employment.
- c. Actions of a government agency or employee damaged or destroyed the plaintiff's property.

For other kinds of claims (including claims by State employees, former State employees, or unsuccessful applicants for State employment that their USERRA rights have been violated), there has been no waiver of sovereign immunity.

Pennsylvania

No. See 42 PA. CONS. STAT. § 8522; *Clark v. Pa. Dep't of Transp.*, 962 A.2d 692 (Pa. Commw. Ct. 2008) ("the clear intent of the legislature is to insulate government from exposure to tort liability, the exceptions to sovereign immunity are to be strictly construed").

Rhode Island

Yes. See 9 R.I. GEN. LAWS § 9-31-1; *Panarello v. State*, 88 A.3d 350 (R.I. 2014); *Laird v. Chrysler Corp.*, 460 A.2d 425 (1983).

South Carolina

Yes. See S.C. CODE ANN. §§ 15-78-40 through 17-78-60; *Copeland v. S.C. Dep't of Corr.*, No. 2013-CP-42-02498, 2014 WL 1978165 (S.C.C.P. Mar. 28, 2014).

South Dakota

No. The state and its employees are immune from liability except (1) to the extent liability insurance is purchased and to the extent coverage is afforded thereunder and (2) when an any employee, officer, or agent of the state, while acting within the scope of his employment or

agency. *See* S.D. CODIFIED LAWS § 21-32-16, 21-32-17. *See also* *Bego v. Gordon*, 407 N.W.2d 801 (S.D. 1987).

Tennessee

Yes. TEN. CODE ANN. § 29-20-208. *See* *Smith v. Tenn. Nat’l Guard*, 551 S.W.3d 702 (Tenn. 2018).¹⁴

Texas

No. *See* *Tex. Dep’t of Pub. Safety v. Torres*, 583 S.W.3d 221 (Tex.App. – Corpus Christi-Edinburg 2018), *pet. denied*.

Through his attorney, Brian Lawler, Torres applied to the United States Supreme Court for certiorari (discretionary review). As of 11/8/2021, when last checked, the Supreme Court has not granted certiorari nor has it denied certiorari. We will update with issue by authoring an article about the *Torres* case when developments warrant.

Utah

No. *See* UTAH CODE ANN. § 63G-7-101 (there has been no express waiver regarding USERRA claims).

Vermont

Yes. *See* VT. STAT. ANN. tit. 12 § 5601; *Brown v. State*, 88 A.3d 402 (Vt. 2013).¹⁵

Virginia

No. *See* *Clark v. Va. Dep’t of State Police*, 793 S.E.2d 1 (Va. 2016), *cert. denied*, 138 S. Ct. 500 (2017).

Washington

Yes. WASH. REV. CODE ANN. § 73.16.070.

West Virginia

No. *See* W. VA. CONST. art. VI, § 35.

Wisconsin

¹⁴ Wright discusses *Smith* in detail in Law Review 18078 (August 2018), the very next article in this series.

¹⁵Wright discusses *Brown* in detail in Law Review 14002 (January 2014).

Yes. See WIS. STAT. ANN. § 321.64; *Scocos v. State Dep't of Veterans Affairs*, 2819 N.W.2d 360 (Wis. Ct. App. 2012).

Wyoming

No. See WYO. STAT. ANN. § 1-39-104; *Wyo. State Hosp. v. Ronnie*, 483 P.3d 840 (Wyo. 2021).

District of Columbia

Probably. See D.C. CODE ANN. § 9-1107.01; *Wash. Metro. Area Transit Auth. v. Barksdale-Showell*, 965 A.2d 16 (D.C. 2009).

Guam

Yes. See *Utalán v. Nissan Motor Corp.*, Civil Case No. 18-00015, 2019 WL 5106675 (D. Guam Oct. 11, 2019).

Puerto Rico

Probably. See *Rullan Rivera v. A.E.E.*, 179 D.P.R. 433 (P.R. 2010).

Virgin Islands

Yes. See *Joseph v. Legislature of V.I.*, Case No. ST-11-CV-419, 2017 WL 7660718 (V.I. Apr. 12, 2017).¹⁶

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¹⁶ Wright discusses *Joseph* in detail in Law Review 17117 (December 2017).

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