

Economic and Social Rights

**I need the
ERA because...**

**ECONOMIC RIGHTS
ARE HUMAN RIGHTS!**

Economic and social rights under international law include the right to decent work, education, health, housing, social security, fair wages, and equal pay to progressively realize economic well-being for everyone. The US Constitution does not explicitly guarantee equality on the basis of sex or gender, which has profound implications for the social and economic security of women and girls, compounded by racial discrimination and other factors. Women in the US are more likely to live in poverty than men and to be concentrated in low-wage jobs. According to the US Census Bureau, in 2021, women earned an average of only 84 cents for every dollar earned by men. Black women earned an average of 67 cents on the dollar compared to white men, and Hispanic women earned just 57 cents on the dollar.

The US does not have a law mandating equal remuneration for work of equal value or explicit legislation prohibiting workplace discrimination based on maternal status. It is one of only two high-income countries that do not guarantee paid maternity leave and one of just 13 high-income countries that do not guarantee paid paternity leave. The US is also one of just two OECD high-income economies that do not account for time off work to care for children in determining pension benefits. A lack of affordable childcare as well as sexual harassment also contribute to women's economic insecurity. At least 37 countries rank higher than the US in terms of women's legal economic equality.

The US has signed but not ratified the specific treaty on economic rights, the International Covenant on Economic, Social and Cultural Rights. Nevertheless, it still has legal obligations to implement the economic rights guaranteed by the U.N. Charter, the Universal Declaration of Human Rights, the 2030 Agenda for Sustainable Development, and the Beijing Platform for Action, which also includes the duty to provide constitutional equality, i.e by incorporating the Equal Rights Amendment (ERA).

What could the ERA do?

Without the ERA, federal economic rights cases are generally decided under Title VII of the Civil Rights Act or the 14th Amendment Equal Protection Clause. For example, the 2007 case Ledbetter v. Goodyear Tire and Rubber Co. involved a Title VII challenge brought by employee Lilly Ledbetter alleging pay discrimination on the basis of sex. The Supreme Court ruled that Ledbetter's claim was time-barred by Title VII, interpreting it to mean that employees cannot challenge ongoing pay discrimination if the original discriminatory pay decision was more than 180 days prior. This decision severely limited the ability of employees to bring claims, encouraged employers to conceal discriminatory behavior prior to the 180-day mark, and enabled ongoing discrimination, which may not have happened with the ERA in place.

The present use of state ERAs by state courts is also indicative of the positive potential impact of a federal ERA. In January 2024, the Pennsylvania Supreme Court decided Allegheny Reproductive Health Center v. Pennsylvania DHS, a case involving a challenge to statutory restrictions on the use of state Medicaid funds for abortion services. The Court held that abortion access is a sex discrimination issue, triggering the application of Pennsylvania's ERA. While the Court did not decide whether the statutory restriction was ultimately discriminatory and sent the case to the lower court, it did emphasize that once the government chooses to provide medical care to people with low income, they must not "intrude upon the [Pennsylvania state] constitutional right to full reproductive autonomy, which includes the right to terminate a pregnancy."

In addition to a firm judicial basis for remedying sex discrimination cases, the ERA would grant the legislative branch clear constitutional authority to enact positive protections to ensure economic equality and rights. This could include laws mandating equal pay for equal work, providing for paid maternity, paternity or parental leave on an equal basis, accounting for child care in the calculation of pension benefits, and more.

Learn more: equalitynow.org/INeedERA