



Right to Provide and Receive Care

[Children](#), [disabled](#) people, elderly people, [everyone has the right to quality care](#) with dignity that guarantees their full development throughout their lives. Governments, including the United States, must recognize this and provide resources and tax regimes that support those that provide care, taking a [substantive equality or human rights based and feminist approach](#) to make work and family care needs compatible. Globally, women perform the vast majority of (2.8x more) [unpaid care and domestic work](#) due to traditional gender norms and stereotypes about women's role in the family.

The US is no exception - norms and stereotypes about women's caregiving are perpetuated by a lack of legal equality on the basis of sex or gender, including without the Equal Rights Amendment (ERA) in the Constitution. [Discrimination against caregivers, often due to outdated norms around "women's work", is not explicitly prohibited by federal law](#), and this [gap matters](#). Even where care work is paid, women workers such as home health aides, daycare workers, and other caregivers often face low wages, precarious conditions, and sexual harassment. There is also a [racist legacy of exclusion](#) of domestic workers, including caregivers, from labor law protections, which is still having an impact on their wages and benefits today.

Women workers in the US who become mothers suffer even [lower pay](#) due to career sacrifices made to provide care because, [unlike every other high-income country](#), there is [no universal paid family leave](#). Fathers, on the other hand, actually enjoy a [fatherhood "premium"](#) and do better economically even than women without children. It is hard for women to [re-enter](#) the formal labor market, leading not just to less earnings, approximately [15% less](#), but less social security and pension or retirement benefits in the long run. Older women also provide, on average, [5 weeks of full-time, unpaid care](#) to family and friends, and during COVID-19 13% of women over age 55 left the workforce to provide care. [Economic rights are human rights](#) and the ERA is an important tool for realizing those rights too.

What could the ERA do?

Indicative of the [positive impact](#) the ERA could have on care in the United States, in 2011, the Constitutional Court of Germany [heard a case](#) in which a mother challenged the national policy granting 12 months paid parental leave, as well as two bonus months if at least two months were taken by the father, as unconstitutional. She argued that she alone was entitled to all 14 months. The Court denied her challenge on the grounds that it undermined [constitutional protections of substantive gender equality](#). The Court emphasized that the Constitution "also obliges the legislature to counteract the consolidation of traditional roles between mother and father in the family." In 2023, a [court in South Africa held](#) that statutory leave provisions that granted birth mothers four months of maternity leave and fathers just 10 days of parental leave were unconstitutional. The Court stated that, "long-standing cultural norms which exalt motherhood are not a legitimate platform for a cantilever to distinguish mothers' and fathers' roles," and that the statute was in violation of the Article 9 equality provision of the [South African Constitution](#).

The ERA could be used to facilitate paid or mandatory leave for all parents and caregivers to remedy persistent inequalities due to underlying gender stereotypes and discriminatory social norms that make it significantly less likely fathers will take leave voluntarily. The ERA would also mean that laws determining family leave would be reviewed under strict scrutiny, and any differences in leave and tax allowances on account of sex under the law are necessary to achieve a compelling government interest.

The ERA would also grant the legislative branch clear constitutional authority to enact positive protections such as on the right to receive and provide care, and laws that provide social protections for long-term care and health. This could include, for example, reforming the federal Family and Medical Leave Act (FMLA), and similar state laws, to include paid parental benefits, expanding the FMLA to cover all employees - not just those in companies with [50 or more employees](#) - accounting for care in the calculation of pension benefits, and providing greater labor protections for caregivers, tax allowances and more.