

How will the ERA Help Women?



NOW believes that the ERA will help advance the rights of all women, including Black women, Native American women, Latinx women, Asian and Pacific Islander women, and LGBTQIA+ persons, establishing the U.S. as a global leader in women's rights. The ERA will serve as a foundation principle for equal opportunity and equal treatment of women and men in all spheres of life. It will also provide a defense against efforts to roll back previous achievements for women's rights and will have the power to more effectively seek redress for women's economic marginalization.

Abortion care – Access to reproductive health care is already constitutionally guaranteed by *Roe v. Wade*. The repeated claim of ERA opponents that the ERA would require the government to allow “abortion on demand” is a misrepresentation of existing federal and state laws and court decisions. In federal courts, including the Supreme Court, a number of restrictive laws dealing with contraception and abortion have been invalidated based on the constitutional principles of right of privacy and due process. However, recent Supreme Court decisions on reproductive rights (e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 2014) have raised concerns about the vulnerability of women's health care access regarding contraception as well as abortion. The existence of an ERA would likely influence such deliberations in the future.



Domestic Violence, Rape and Sexual Assault – The ERA would ensure that police departments are required to protect women from domestic violence and would be pushed to consistently enforce restraining orders. Further, the ERA could provide a constitutional basis for claims of gender-based violence, perhaps permitting a private right of action to sue abusers to obtain compensation for injuries. Women are the overwhelming majority those are injured by gender-based violence and currently lack a solid constitutional basis on which to bring such a claim.

Discrimination in Insurance – The ERA would require state insurance regulators to end sex-based discriminatory practices by private insurance companies against their women customers. Most affected would be auto insurance and annuities – types of policies that have long charged women more than men for the same coverage.

Military Policy – The ERA would compel the military to comply with the law and structure its policies, procedures, and protocols to meet the needs of enlisted women in providing career advancement, pay, retirement compensation, training, and providing medical services particular to women's physiology. It may also help improve military procedures to address sexual assault – a severe and continuing problem for women.

Pay Inequity – the ERA could help further pay equity legislation (which has been stalled in Congress for more than 20 years) and provide a more effective tool for litigation on sex-based employment discrimination. It may even spur adoption of stronger equal pay laws (such as for “substantially similar” work) at federal and state levels.

Pregnancy Discrimination – The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical

conditions constitutes unlawful sex discrimination under Title VII. But pregnant women are still being laid off or fired by employers when any restriction on their ability to carry out their duties is prescribed. Thus far, the courts and Congress have failed to provide truly adequate protections for pregnant women. An ERA would underline the notion that both women and men should have the ability to work and have children simultaneously and that reasonable accommodation must be made by employers.

Workplace Discrimination – Only a federal Equal Rights Amendment can provide the highest and broadest level of legal protection against sex discrimination. Under the ERA, the heightened standard of analysis, strict scrutiny, would strengthen equal protection. But given that women are frequently situated differently, equal protection considerations do not always apply. Importantly, the ERA can establish the goal of equality between men and women and, thereby, facilitate the use of the law as a matter of constitutional rights to promote sex equality and to end sex discrimination. The ERA could help set more realistic legal standards for demonstrating sex discrimination in the workplace work, so for plaintiffs it could be easier to prove their case in court. These changes, if adopted, could alter outcomes which depend on the legislative loophole of a “factor other than sex” to uphold unequal pay for equal work and perpetuate pay inequity.

Sources:

The Equal Rights Amendment FAQ: Frequently Asked Questions, [FAQ — Equal Rights Amendment](#)

Equal Means Equal – Why the Time for an Equal Rights Amendment is NOW, by Jessica Neuwirth (The New Press, 2015)