

# Ninth Circuit Holds that After-Acquired Evidence May Disqualify Plaintiffs Under the Americans With Disabilities Act

by Michael Droke

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On April 17, 2020, the Ninth Circuit Court of Appeals ruled that “after-acquired” evidence was admissible to show that an individual was not qualified under the Americans with Disabilities Act.

Sunny Anthony was employed by Trax International Corp. as a technical writer. She sued Trax alleging termination because of her disability and that Trax failed to engage in the statutorily-required interactive process to find her a reasonable accommodation for her claimed disability. However, the Company discovered that Anthony lacked a bachelor’s degree in English or a related field, which was required by a third-party contract.

The Ninth Circuit held that because Anthony did not have the requisite bachelor's degree at the time she was discharged, she was not “qualified” within the meaning of the ADA, and the employer had no obligation to engage in the interactive process.

Of course, employers understand that the ADA definition of “covered individual” includes someone who can perform the essential functions of their job, with a reasonable accommodation if necessary. However, the employee still must be “qualified” for the job. If an employer learns after discharge, even during the litigation, that the employee-plaintiff does not meet the prerequisite qualifications for their position, they are not a “covered individual” within the meaning of the ADA and do not have standing to sue. In other words, continued investigation can eliminate the disability claim by using the “after-acquired evidence” to show that the person was not qualified in the first place.

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