

12.7 ADA—Qualified Individual

The second element of the ADA claim that the plaintiff must prove is that the plaintiff is a qualified individual under the ADA.

The term “qualified individual” means an individual with a disability who, either with or without a reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. The individual must satisfy the requisite skill, experience, education, and other job-related requirements of the employment position.

Comment

See 42 U.S.C. § 12111 (employment-related definitions); 29 C.F.R. § 1630.2(m) (qualified individual). For a definition of “disability,” see Instruction 12.2 (ADA—Physical or Mental Impairment).

An individual who fails to satisfy job prerequisites, such as having a license, cannot be considered qualified within the meaning of the ADA unless he or she can show that the prerequisite is itself discriminatory. *Johnson v. Bd. of Trustees*, 666 F.3d 561, 567 (9th Cir. 2011) (noting that a law firm that requires lawyers to have graduated from an accredited law school and passed a bar examination need not provide an accommodation to a disabled individual who does not meet this selection criteria).

“[O]ne must be able to perform the essential functions of employment at the time that one is discriminated against in order to bring suit.” *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1112 (9th Cir. 2000); see *Stanley v. City of Sanford*, __ U.S. __, 145 S. Ct. 2058, 2063-65, 2071 (2025) (holding that “to prevail under [42 U.S.C.] § 12112(a), a plaintiff must plead and prove that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of an employer’s alleged act of disability-based discrimination” and that a retired employee who does not hold or seek a job is not a “qualified individual” under Title I); *Johnson*, 666 F.3d at 564. A disabled employee or applicant who engaged in the use of illegal drugs at the time of the discriminatory incident will not be considered a “qualified individual with a disability” when the covered entity acts on the basis of such use. 42 U.S.C. § 12114(a); *Lopez v. Pacific Maritime Ass’n*, 657 F.3d 762, 764-68 (9th Cir. 2011) (rejecting discrimination claim challenging one-strike rule that permanently eliminated candidates who tested positive for drug use; leaving open the question of how disparate impact claim might be affected by 42 U.S.C. § 12112(b)(6), governing selection criteria that tends to screen out individuals with a disability). See also *Mayo v. PCC Structural, Inc.*, 795 F.3d 941, 944 (9th Cir. 2015) (holding that under Oregon disability law, which is interpreted consistently with the ADA, an employee who makes serious and credible threats to kill coworkers is not a qualified individual, regardless of whether the threats stem from mental illness; ADA regulations do not require an employer to analyze separately

whether an employee poses a direct threat to health or safety of others in workplace under 42 U.S.C. § 12113).

The phrase “holds or desires” has been interpreted by the Ninth Circuit to apply in situations when employees request reassignment “even if they cannot perform the essential functions of the current position.” *Barnett v. U. S. Air, Inc.*, 228 F.3d 1105, 1111 (9th Cir. 2000), *vacated on other grounds*, 535 U.S. 391 (2002).

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