

South University Facing Disability Discrimination Class Action over its Return-to-Work Policy

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On Sunday, July 11, 2021, Wigdor LLP filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) against South University on behalf of Dr. Elizabeth Kostal, an Associate Professor and the University’s Academic Program Chair for Public Health and Health Sciences at its Virginia Beach campus.

The EEOC Charge asserts that South University violated Dr. Kostal’s rights under the Americans with Disabilities Act (“ADA”) when it created a blanket policy requiring all faculty and staff to return to campus during the COVID-19 pandemic and refused to accommodate employees with disabilities under this plan.

South University is a private university with 11 campus locations spanning seven states (Alabama, Florida, Georgia, North Carolina, South Carolina Texas and Virginia), plus online degree programs. The EEOC filing is a precursor to filing a class action against the University in federal court.

Unfortunately, Dr. Kostal has a long and complicated history of severe heart and lung conditions that places her at an extremely high risk of life-threatening complications from COVID-19 infection, including asthma, severe bronchitis, dilated cardiomyopathy, superior vena cava syndrome, pacemaker implantation and sick sinus syndrome. Furthermore, Dr. Kostal is ineligible to receive the COVID-19 vaccine due to a history of adverse reactions to vaccination.

The EEOC complaint alleges that South University implemented a policy requiring all faculty and staff to return to campus starting April 19, 2021—despite Dr. Kostal’s classes and meetings still being held virtually at the time. Less than 24 hours after Dr. Kostal requested a reasonable accommodation to continue teaching remotely, the University rejected her request and wrongly told her that she “did not outline a disability consistent with an approval for remote working conditions,” according to the EEOC Charge.

Dr. Kostal alleges that the University rejected her accommodation request without engaging in any interactive process as required by the ADA, according to the EEOC Charge. Moreover, as alleged, the University informed Dr. Kostal that it was not approving COVID-19-related accommodations for anyone who requested them—another alleged violation of the ADA.

As alleged, in order to keep her job, Dr. Kostal was forced to return to SU’s campus (to the same building as nursing students and faculty who were actively treating COVID-19 patients) and lecture to students virtually for two to four hours while double-masked. In doing so, Dr. Kostal’s pacemaker would misinterpret the data coming in and increase her heart rate to 150 beats per minute for the duration of the lecture.

The complaint further alleges that five weeks later, and only after facing the threat of legal action, SU granted Dr. Kostal a temporary accommodation while also signaling that it would not continue providing this accommodation for much longer.

Dr. Kostal is represented by Wigdor LLP Partner [David E. Gottlieb](#) and Associate [John S. Crain](#).

NEW from [@NBCNews](#): A professor at South University in Virginia Beach says the school put her life in danger by forcing her to return to campus, despite her having multiple chronic heart and lung conditions and being ineligible to get the COVID-19 vaccine. <https://t.co/iqV868hdmt>
— WigdorLaw (@WigdorLaw) [July 12, 2021](#)

[Read the Full EEOC Charge here](#)

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