

Professor Says COVID Back-To-Campus Order Violated ADA

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By **Alexis Shanes** · July 12, 2021, 6:09 PM EDT

A public health professor with severe heart and lung conditions accused a Virginia university of ordering faculty back to campus this spring while refusing any coronavirus-related requests for disability accommodations, according to her U.S. Equal Employment Opportunity Commission charge.

In an EEOC complaint filed Sunday, Elizabeth Kostal says South University "succumbed to a fallacy" that COVID-19 is no longer a threat when it sent all faculty back to the Virginia Beach campus in April. That meant Kostal, who has a pacemaker and cannot get the vaccine, had to work in the same building as students and faculty who were treating COVID-19 patients, according to the charge. COVID-19 is the respiratory ailment caused by the coronavirus.

"Faced with the decision to either risk her own life or the financial stability of herself and her family, Dr. Kostal made the impossible choice to capitulate to the university and work from campus," the charge says. "She double-masked, shut her office door and lectured anywhere from two to four hours to students who were still remote, only taking the masks off to eat and drink in her car during the day."

Savannah, Georgia-based South University, a private school with a limited number of curricular offerings, has campuses in seven states as well as online degree programs. Kostal's charge, a precursor to a federal lawsuit, names South University of Virginia-Member LLC and South University of Savannah LLC.

Kostal, who also serves on the school's COVID-19 committee, asked to continue teaching from home after the university announced its return-to-work plans. The university denied her request within 24 hours, according to the charge.

In a letter refusing her accommodation request, the university said Kostal did not have a disability, though she claimed she was covered by the Americans with Disabilities Act even before the pandemic.

The letter, which is attached to the charge, also cited the school's blanket policy against COVID-19 accommodations, noting that it had denied similar requests from other employees. It ended by referring Kostal to return-to-campus guidelines she had helped develop.

"The contents of this letter ... are astounding in their callous, bureaucratic disregard for the life of a valued — and beloved — employee," the charge says.

Five weeks later, after she threatened to sue, the university gave Kostal a 30-day accommodation, according to the charge. The school later extended the accommodation through July but threatened to cut her job responsibilities, according to additional communications from the school.

"South University's policy to deny reasonable accommodations for COVID-19-related disabilities across the board is the type of 'one-size-fits-all' determination that the ADA was created to prevent," Christine Hogan, who represents Kostal, said in a statement Monday.

According to the charge, the university's chancellor tried in July and December 2020 to get the school reopened against the COVID-19 committee's recommendation.

The chancellor ordered faculty and staff, but not students, back to campus in April — and announced the return two months in advance. In May, the school ended social distancing and mask mandates, according to the charge.

By then, Kostal had worked from home for roughly a year, receiving "exemplary" ratings from fellow faculty and students, according to evaluation sheets attached to her charge.

The university offers online classes during normal times, and Kostal claims she was never told why her in-person presence was needed.

"At least when it is profitable and convenient for [the school], the university has no problem holding out to the world that it sees no difference between its in-person and online courses," the charge says.

As normalcy returns for many vaccinated Americans, people with disabilities who can't get the vaccine risk being left behind and could wait many more years for regular life to return, according to the charge.

"Employers cannot be allowed to disregard COVID-19-related disabilities and the ADA because they wish to pretend the world is back to normal," the charge says.

"If [the university] goes unpunished, Dr. Kostal's experience will become a common one," according to the charge. "In short, disabled Americans will become second-class citizens."

A university spokesperson did not immediately respond Monday to a request for comment.

Kostal is represented by Christine Hogan and John Crain of Wigdor LLP.

Counsel information for South University was not immediately available Monday.

The case is Kostal v. South University of Virginia-Member LLC et al., in the U.S. Equal Employment Opportunity Commission. A case number was not immediately available Monday.