

Price Gouging Weekly Round Up

May 18, 2020

Price gouging enforcement and litigation is front and center for company counsel and business managers nationwide. Our weekly round-up highlights some of the most relevant news and information to our clients and friends.

[Amazon Executive Calls for Federal Price Gouging Law](#)

Brian Huseman, Vice President of Public Policy at Amazon, recently called on Congress to establish a federal price gouging law. According to Huseman, "[t]he disparate standards among states present a significant challenge for retailers working to assist law enforcement, protect consumers, and comply with the law. . . . This would [] help retailers like Amazon more effectively prevent bad actors and ensure fair prices." The Amazon Executive also proposed a framework that would clarify any ambiguity that exists among state laws. Under the proposal, price gouging laws would kick in when the federal government declares a national emergency or public health crisis. The uniform standard, Huseman argued, should also establish "clear pricing standards, define who and what are covered by the law, and ensure strong enforcement authority" and "apply to all levels of the supply chain." The proposal recommends that the pricing prohibitions be defined as "unconscionable or grossly excessive or unconscionably excessive." Lastly, Huseman goes a step further, stating that "pricing prohibitions should apply to the party who actually sets the price of a product."

[House of Representatives Introduce Bill that Includes Price Gouging Provisions](#)

On May 12, 2020, the House of Representatives introduced The Heroes Act, which includes provisions directed at eliminating price gouging. The legislation provides that during the public health emergency declared as a result of COVID-19, "it shall be unlawful for any person to sell or offer for sale a good or service at a price that—(1) is unconscionably excessive; and (2) indicates the seller is using the circumstances related to such public health emergency to increase prices unreasonably." As with many state price gouging laws, the proposed legislation includes a number of factors to be considered in determining whether a price is excessive. Among the factors are whether the price increase is attributable to increased costs and whether the price grossly exceeds the average price during the 90-day period immediately before January 31, 2020. The legislation would allow State attorneys general and the Federal Trade Commission to seek civil penalties from companies and individuals engaging in price gouging during the COVID-19 emergency. Companies should be aware of the possibility of a new uniform standard, especially those doing business in states without price gouging laws. That said, as of May 14, 2020, the House has not yet voted on the bill, which also requires Senate and White House approval to become law.

California Grocer Charged with Price Gouging

We have seen enforcement actions against both big and small businesses and a California grocer, accused of doubling and tripling food prices, is the most recent. Prosecutors from Alameda County and the state Attorney General's office filed a joint complaint against the grocer on May 7, charging nine misdemeanor counts of price gouging. According to detectives, the grocer increased prices 134% over a week and a half. "We take price gouging seriously and are committed to going after those who break the law during the public health emergency," stated Attorney General Xavier Becerra. "The Department of Justice relies on all Californians to be vigilant in detecting price gouging. If you see something suspicious, or if you are a victim of price gouging, file a complaint. The more you report, the more we can stop this abuse."

Higher Gas Prices in North Carolina

The cost of crude oil around the world has decreased, but at least one North Carolina county is seeing an increase in gas prices. The average price of gas in Rowan County is \$1.774 per gallon, approximately 1.4 cents more per gallon than the average price across four neighboring counties and nearly 2 cents more per gallon than the cheapest neighboring county. Local operators were not able to offer a reason for increased prices, but Gary Harris, Executive Director of the North Carolina Petroleum and Convenience Marketers noted that gas is "truly a commodity product" whose price is "all about what the market will bear at a certain point in time." According to Harris, the final price consumers pay for gas can be affected by a variety of factors, including federal and state taxes, costs from additives that companies include, insurance costs, and typical business expenses like renting or owning the land on which the gas station sits. When asked by a journalist about whether the increased prices raised price gouging concerns, a spokeswoman for the North Carolina Department of Justice stated that "[t]he issue we have to focus on for price gouging purposes is whether the prices are 'unreasonably excessive under the circumstances.'" Some counties in Oregon and Minnesota have seen similar above average gas prices as well. As states reopen for business, the American Automobile Association expects the price of gas to increase further as demand increases.

Price Gouging and Medical Services

A class action complaint alleging price gouging, negligence, breach of implied contract, and other claims was filed in April in the Superior Court of the State of Washington against physician and healthcare provider groups Columbia Valley and Envision seeking an injunction, restitution, and unspecified damages. In the Complaint, plaintiffs allege a practice of unreasonable and excessive fees for medical services. While price gouging enforcement has historically been the realm of state attorneys general, private plaintiffs are increasingly taking a role, and taking aim at the unwary. This case is the latest in a series of class actions filed alleging price gouging and seeking damages, and is another warning and reminder of the importance of maintaining robust price gouging compliance practices to protect against such claims. This is true not just for medical services providers, but for supply chain companies across many industries, as companies with national footprints need to ensure compliance with a wide range of individual state rules.

Price Gouging Refunds in Florida

New numbers show that since Florida declared a state of emergency in March, consumers have received more than \$497,000 in refunds from businesses accused of price gouging during the pandemic. Attorney General Ashley Moody's office has contacted 6,300 businesses about allegations of price gouging. The state's price-gouging hotline has also received about 4,400 complaints from consumers across the state. "We want to make sure these essential commodities like cleaning supplies and protective gear are available to them (residents) at a fair price," Moody said. "So, as long as this COVID-19 emergency is in place, we will keep fighting."

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