Proskauer

Price Gouging Weekly Round Up

June 15, 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.

Governor Andrew Cuomo Signs Legislation Expanding Section 396-r

On June 6, 2020, Governor Andrew Cuomo signed legislation expanding the scope of New York's price gouging statute, Section 396-r. According to Cuomo, "[f]rom the beginning of this pandemic we've seen too many instances of retailers taking advantage of this dire situation and charging exorbitant prices for critical medical supplies. By banning price gouging on personal protective equipment, we are helping to ensure our health care workers—who have been working tirelessly to save lives at great personal danger to themselves—and the public have access to these supplies, while holding these unscrupulous retailers accountable for attempting to capitalize on the fear of others." Since the beginning of the pandemic, New York Attorney General Letitia James has received over 7,000 COVID-19 related price gouging complaints. New York's previous price gouging law, N.Y. Gen. Bus. Law § 396-r, only covered consumer goods and services vital and necessary for the health, safety and welfare of consumers." The new legislation broadens the scope of Section 396-r to also cover "essential medical supplies and services used for the care, cure, mitigation, treatment or prevention of any illness or disease," along with "any other essential goods and services used to promote the health or welfare of the public."

Price Gouging Complaints in Pennsylvania Reach Over 5,000

As of June 5, 2020, the Pennsylvania Attorney General's Office has received more than 5,000 complaints related to COVID-19 price gouging. Pennsylvania's price gouging law prohibits unconscionably excessive prices "during and within 30 days of the termination of a state of disaster declared by the Governor." The statute states that "[i]t is prima facie evidence that a price is unconscionably excessive if … parties within the chain of distribution charge a price that exceeds an amount equal to or in excess of 20% of the average price at which the same or similar consumer goods or services were obtainable in the affected area during the last seven days immediately prior to the declared state of emergency." Penn. P.L. 1210, No. 133. Attorney General Josh Shapiro has issued 466 cease and desist letters, and issued subpoenas to 200 businesses. According to AG Shapiro's Office "[w]e won't tolerate illegal price gouging during this emergency, and we're taking action every day to stop it. Nearly a third of Pennsylvanians are out of work and figuring out how to put food on the table. Gouging the prices of basic necessities to help keep us safe from the pandemic—face masks, hand sanitizer and rubbing alcohol—is outrageous and illegal."

Colorado Legislature Considers Ban on Price Gouging

Colorado is among the minority of states that do not currently have a price gouging law. However, pending legislation could change this. House Bill 1414 would ban "any unfair and unconscionable increase in the price of consumer goods and services" during a declared disaster. The bill could allow the Colorado Attorney General or local district attorneys to bring civil actions for price gouging, with fines as much as $20,000. Despite Colorado's lack of a price gouging statute, Attorney General Phil Weiser promised in March that his office "will be vigilant in monitoring and identifying any scams that might arise during the coronavirus emergency, educating consumers, and holding bad actors accountable."

Price Gouging Complaints in Arkansas

Since the beginning of the pandemic, Arkansas Attorney General Leslie Rutledge's office has received 2,000 to 3,000 complaints per week. The chief complaint, according to AG Rutledge, is regarding the increase in the price of personal protective equipment ("PPE"). While the AG's Office has not issued any fines, the office is still investigating claims. In Arkansas, "it is unlawful for any person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than ten percent (10%) above the price charged by that person for those goods or services immediately prior to the proclamation of emergency." Ark. Stat. § 4-88-3030. However, as is the case in most states, AG Rutledge points out, a greater price is not unlawful if the person can prove increased costs. A person found in violation of the price gouging statute can face a civil penalty of up to $10,000 per violation and be found guilty of a Class A misdemeanor.

Are People Getting Away With Price Gouging in Ohio?

The Ohio Attorney General's Office has received 1,151 complaints about price gouging, yet has taken "public action" against only one individual. The lawsuit was against an Ohio individual for selling masks at a significant markup. The individual settled and agreed to pay $15,000 back to consumers. When asked about the lack of public action, a spokeswoman for the AG's Office stated that "[w]e cannot comment on why we have or have not taken public action." Attorney General Dave Yost, however, has acknowledged that Ohio's price gouging laws are weak and that state lawmakers are working on toughening them. While Ohio does not have a specific price gouging statute, price gouging is illegal under the Ohio Consumer Sales Practice Act, which provides that "[n]o supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction." Ohio Rev. Code Ann. §1345.03. A violation of the Act can result in civil penalties up to $25,000.

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