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Price Gouging Laws Remain Even When Social Distancing Laws Have Ended

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Florida Governor Ron DeSantis recently made headlines around the country by announcing that he was lifting physical distancing restrictions on restaurants and other businesses in Florida. The Governor's order allows restaurants to open at full capacity, and prevents cities and counties from ordering them to operate at less than half capacity unless justified by health or economic reasons. Florida cities and counties are also barred from collecting fines for violations of social distancing or mask rules. But, while such actions may seem to indicate an imminent return to something resembling normalcy, or at least the end of widespread social distancing restrictions, it is important for companies to remember that price gouging laws may not follow the same path.

Indeed, while Florida's Governor has moved to re-open the state's economy, the Florida Attorney General has continued to actively monitor and enforce compliance with the state's price gouging law, including by continuing to operate the state's price gouging hotline. And as Florida continues to deal with the aftermath of the hurricane season, it is likely that price gouging laws will continue to remain in effect there for some time to come

Florida does not stand alone as the only state attempting to both re-open its economy while also maintaining its price gouging laws. In Texas, the Governor likewise loosened social distancing restrictions, allowing many businesses to operate at 75% capacity. These businesses, previously allowed to operate at only 50% capacity, include retail stores, restaurants, and office buildings. However, as in Florida, the move to physically re-open businesses does not mean a similar freedom of pricing actions, as Texas' current price gouging law is set to remain in effect indefinitely under the President's national emergency declaration, which currently has no end date.

On the other hand, the fact that a state is still under a state of emergency because of the COVID-19 pandemic does not mean that the state's price gouging laws are necessarily still in place. Recently, Wisconsin allowed its price gouging laws to expire, despite the fact the state remains in a state of emergency. Just as a business should not simply assume they are safe to raise prices because social distancing restrictions have been lifted, a company should not assume it cannot raise prices until all government measures related to the pandemic have ceased.

Therefore, companies must remain vigilant in monitoring the legal landscapes in which they operate, and not assume that price gouging laws either are or are not in operation because of other trends in the headlines. Given that the statutes of limitations for many state price gouging laws will allow plaintiffs to bring claims for several years into the future, it is important that price gouging remain a key compliance concern for businesses for the foreseeable future.

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