Updates
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Coronavirus Triggers Concerns Over Price Gouging

Last Friday, the White House declared a national state of emergency amid concerns of the global spread of the coronavirus. Nearly every state and numerous cities have followed suit by issuing declarations triggering emergency measures and regulations on businesses.

In many states, those declarations automatically activate laws against "price gouging"—i.e., price increases for products or services during a period of high demand. Most recently, on March 17, 2020, the chairman of the U.S. House Committee on the Judiciary and other House leaders wrote to the chairman of the Federal Trade Commission (FTC) asking that the FTC act immediately to protect consumers from price gouging. The legislators promised to pursue legislation if necessary to assist the agency in those efforts. As retailers and others encounter increased costs and demands for certain products, they must carefully observe the patchwork of state statutes and local regulations governing price increases during market disruptions.

Differing Approaches

The FTC has broad investigatory authority and is periodically tasked by the U.S. Congress to investigate or occasionally enforce price gouging concerns. The oil and energy sectors, particularly after Hurricane Katrina, are examples of such efforts. More generally, anti-price gouging laws are enforced at the state level. States vary in their approaches to price gouging. Some statutes target specific goods like gasoline and medical supplies; others prohibit overcharging for "necessities" more broadly.

Likewise, in some states *any* price increase beyond the average is arguably prohibited; in others, merchants may increase prices, but not to a level that is "unconscionable." Some states prohibit increases beyond a certain threshold—ranging from 10% (such as in California, New Jersey, Utah, and West Virginia) to 15% (Oregon, Wisconsin) to 20% (Pennsylvania).

Most, but not all, states explicitly allow price increases to account for increased input costs, like the costs of supplies or commodities.

The penalties for violating state price gouging laws can be severe. While the most common remedies are civil fines, criminal penalties are available in at least eleven states (Arkansas, California, Connecticut, Florida, Louisiana, Maine, Mississippi, Missouri, Oklahoma, South Carolina, and West Virginia). Some states provide a private right of action as well.

Case Study: New York

New York's Price Gouging Law (Gen. Bus. Law § 396-r) prohibits merchants from selling goods or services that are "vital to the health, safety or welfare of consumers" for an "unconscionably excessive price" during a state of emergency.

The statute defines an "unconscionably excessive price" to include a "gross disparity" from the typical price of the goods or from the price of the goods immediately before the market disruption.

In 2005, New York officials successfully pursued several gas stations for price gouging after Hurricane Katrina. And authorities in New York City have already initiated enforcement measures against retailers accused of raising prices by at least 10% in the wake of the coronavirus pandemic.

Takeaways

The coronavirus is changing the way we work and do business, creating unusual supply and demand trends. Given the widespread states of emergency around the country, retailers should be aware of the state and federal anti-price gouging efforts and take appropriate measures to justify any price increases.

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