

Price Gouging and Services: Third-Party Food Delivery Price Gouging?

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As new restrictions addressing the economic impacts of COVID-19 continue to be proposed, some are targeting price increases for services. Businesses may want to re-familiarize themselves with the “services” covered by existing price gouging laws and pay close attention to developments, as they may cover unexpected areas.

Many existing state price gouging rules already covered a range of services, including not only “necessary” or “essential” services, or “emergency” services, but also:

- transportation;
- construction;
- healthcare services;
- storage services;
- video streaming; and
- child care.

Price increase restrictions are being enforced at the state level already. Perhaps unsurprisingly, given

the current health crisis, one early example was an action brought against physician and healthcare provider groups. A [class action complaint](#) alleging price gouging and other claims was filed in April in Washington state court, alleging unreasonable and excessive fees for medical services. Private plaintiffs are increasingly taking a role, and this case is the latest in a series of class actions filed alleging price gouging and seeking damages.

At the federal level, a bill pending in the Senate would cover a broad range of services. In mid-May, the House passed “[The Heroes Act](#),” [HR 6800](#), a proposed pandemic relief bill that would in part create a federal price gouging regime for the current state of emergency. The Act would make price gouging a violation the FTC Act’s prohibition on unfair or deceptive practices, while also authorizing actions by state attorneys general. It would apply to “any person” who sells or offers for sale a “good or service” at an “unconscionably excessive” price that “indicates the seller is using the circumstances related to such public health emergency to increase prices unreasonably.” “[G]ood or service” would be defined broadly as:

- “a good or service offered in commerce, including—

(A) food, beverages, water, ice, a chemical, or a personal hygiene product;

(B) any personal protective equipment for protection from or prevention of contagious diseases, filtering facepiece respirators, medical equipment and supplies (including medical testing supplies), a drug as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act ([21 U.S.C. 321\(g\)\(1\)](#)), cleaning supplies, disinfectants, sanitizers; or

(C) any healthcare service, cleaning service, or delivery service.”

Local governments have also recently taken a more targeted approach to managing the pricing on services during this emergency. In addition to the existing restrictions on price increases for various covered services, for example, several cities and counties have taken additional steps to cap how much food delivery services can charge for orders made during a state of emergency.

New York City recently [capped](#) certain fees that a third-party delivery service may charge — 15% for delivery services, and 5% for other services. Third-party services would be subject to a civil penalty of up to \$1,000 per restaurant per day for violations. These caps will extend 90 days after the emergency has ended.

Comparable limits are now in place in [San Francisco](#), [Seattle](#), and, most recently, Los Angeles. The Los Angeles City Council [approved](#) a similar third-party food delivery app fee limit. The ordinance creates a civil cause of action, with a right to obtain attorney fees, against potential violators. The L.A. County Board of Supervisors is preparing its own [ordinance](#) to cap third-party delivery fees in the unincorporated areas of the County of Los Angeles, which notably may keep the measure in place permanently, irrespective of the pandemic.

The focus on third-party food delivery services is just one example of the kinds of regulation on the service offerings companies may need to account for as the state of emergency persists and the price gouging landscape continues to evolve. The broad approach in The Heroes Act and the industry-specific examples at the local level attest to regulators’ close attention to prices on services, and should prompt companies to continue aggressively managing their price gouging compliance efforts.

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