

Insights

HOW TO AVOID COVID-19 PRICE GOUGING IN THE UNITED STATES

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COVID-19 has presented countless challenges since it began to spread unchecked across the United States. Among those challenges are severe shortages of cleaning, medical, and food supplies. Many of the medical supplies and personal protective equipment necessary to combat the spread of COVID-19 have become almost impossible to find. These supplies range from ventilators for critically ill patients to basic living essentials like toilet paper and disinfectant. As a result of the shortages, there have been numerous reports of “price gouging.” Historically, the states have been at the forefront in prosecuting allegations of price-gouging. Recently, however, the federal government has thrown its considerable weight into fighting price-gouging and hoarding. It is important to understand how this current crack-down may affect your business.

Over two-thirds of the states, including the District of Columbia have price gouging laws, with penalties that may include jail time, fines, and prohibition of future sales. Price gouging is the practice of charging excessively high prices for products or services during a state of emergency or other unusual market conditions. Each state law differs on defining what constitutes price gouging so a careful study of where your company sells its products is necessary. [This BCLP alert](#) discusses in more detail how these state laws work.

The federal government has historically not had its own price gouging statute. However, as a result of the pandemic, President Trump recently issued a [government order](#) invoking the [Defense Production Act](#). (DPA), which prohibits the hoarding and price gouging of any materials deemed “scarce” by the Department of Health and Human Services (HHS). HHS has issued a list of scarce materials including some kinds of respirators and a number of PPE-related materials and items. Additionally, U.S. Attorney General Barr announced the creation of the [DOJ COVID-19 Hoarding and Price Gouging Task Force](#). This task force will “develop effective enforcement measures, best practices, work closely with HHS as they designate particular items and equipment, and coordinate nationwide investigation and prosecution of these illicit activities.”

The task force has an attorney from all federal districts. This means that there are federal resources in every state to investigate allegations and bring cases. This is a top priority for the DOJ. To demonstrate the seriousness of the task force, it has already brought two cases against

three individuals alleging violations of the Defense Production Act by a retailer in the Eastern District of New York. (Click [here](#) and [here](#) for US Attorney press releases.)

Companies that are contemplating raising prices on goods that are in high demand but scarce during the pandemic, should check to see whether their state has a price gouging law or whether their governor has issued an executive order banning price gouging. When examining the state's law or executive order on price gouging, the company should check the size and type of price increase that may constitutes price gouging. It should understand how the prior price of its product was determined. Companies should keep detailed records of any increased costs that justify the price increases as well the affected products' average price prior to the emergency. Companies should also document the reasons for the price increases. If the sole reason for raising prices is greater demand during the pandemic, companies should consider whether the increase might be deemed price gouging.

BCLP's White Collar Team is available to provide advice as needed to help avoid government scrutiny in this emerging area of concern.

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Mark A. Srere

Washington

mark.srere@bclplaw.com

[+1 202 508 6050](tel:+12025086050)

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