

New York AG Files Suit to Compel Tyson to Comply with Price Gouging Subpoena

Minding Your Business Blog on August 30, 2022

New York State Attorney General Letitia James has filed a petition to compel Tyson Foods to comply with a subpoena in connection with ongoing price gouging investigations by the state. New York's price gouging statute imposes civil penalties on sellers of essential goods charging unconscionably excessive prices during an abnormal disruption of the market. The subpoena requests information relating to prices, dates of sale, purchasers, costs, and profit margin for Tyson's meat products sold in New York from December 1, 2019 through April 2022.

In the petition, the NY AG alleges that Tyson partially complied with the subpoena, but later refused to provide additional information on the grounds that the company's sales in New York were *interstate sales* during the relevant period, and thus not covered by New York's price gouging law. Tyson appears to be relying on a Dormant Commerce Clause argument against the application of New York's price gouging law, a topic covered in a previous [post](#).

Despite any defenses Tyson may raise, or ultimately succeed on, the petition and ongoing investigation serves as a warning to businesses that price gouging compliance continues to remain an area of focus for government regulators and enforcement agencies even two-and-a-half years after the start of the COVID-19 pandemic. New York previously lifted its COVID-19 State of Emergency over a year ago, on June 24, 2021, however, on December 26, 2021, the Governor declared a second State of Emergency in reaction to the emergence of new COVID-19 variants. The second State of Emergency remains in place, triggering New York's price gouging law.

As we have previously discussed, price gouging laws historically are designed to temporarily prevent local price increases in reaction to emergencies such as severe storms, wildfires, flooding, etc. Many states, and the federal government, continue to have active states of emergency related to the pandemic, triggering many states' price gouging laws. As market factors such as inflation, fuel costs, and supply chain issues, force reputable businesses to raise prices on goods and services, law-abiding business face the challenging scenario of navigating price gouging laws while costs continue to rise – requiring a redoubling of compliance efforts.

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