1325 AVENUE OF THE AMERICAS ▪ NEW YORK, NEW YORK 10019
TELEPHONE: 212.451.2300 ▪ FACSIMILE: 212.451.2222

Client Alert

November 2026

NYC Council Passes Ban on "Surveillance" Pricing — and Online Sellers Nationwide Should Take Note

On November 12, 2026, the New York City Council voted 44 to 5 to pass a bill prohibiting "surveillance" pricing - the practice of using personal data and algorithms to charge different consumers different prices for the same goods or services. The bill now awaits action by Mayor Mamdani, who is expected to sign it into law. Although the law would be limited to transactions with New York City consumers, it may have nationwide implications for pricing and discount practices, given the borderless nature of e-commerce.

For context, the New York City bill is the latest development in a growing body of law regulating this type of pricing. Since November 10, 2025, New York State's Algorithmic Pricing Disclosure Act (N.Y. Gen. Bus. Law § 349-a) has required a specific disclosure when surveillance pricing is used, namely, "THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA." Further, a statewide ban, the One Fair Price Act, has passed the New York State Legislature and awaits the Governor's action by December 31, 2026. Connecticut has also enacted restrictions on surveillance pricing, which are set to take effect on July 1, 2027. At the federal level, the Federal Trade Commission ("FTC") has proposed an enforcement policy statement on personalized pricing and, on October 28, 2026, issued investigatory orders related to such pricing practices to nine companies, including Delta, United, and JetBlue.

The New York City bill draws a distinction between surveillance pricing and dynamic pricing. It would continue to permit dynamic pricing based on market conditions, such as demand, inventory, timing, and competition, where all consumers see the same price at the same moment. By contrast, once in effect, the New York City law would prohibit setting or adjusting prices with an algorithm that uses personal data to charge different consumers different prices for the same goods or services. The ban would reach any entity domiciled in New York City or transacting with consumers in New York City, including out-of-state sellers. Online businesses, including e-commerce and travel platforms, that sell to New York City consumers should therefore assume the law would apply to

attorney

Andrew B. Lustigman
alustigman@olshanlaw.com
212.451.2258

Morgan E. Spina
mspina@olshanlaw.com
212.451.2343

practice

Advertising
Marketing & Promotions
Internet & Digital Marketing Law
Brand Management & Protection

those sales wherever the business is located. Geofencing may reduce exposure for out-of-state sellers, but it would not exempt businesses domiciled in New York City.

Importantly, the ban would not apply to *bona fide* discounts that are applied uniformly to every consumer who meets the applicable conditions or criteria. Loyalty-based or other condition-based discounts would likely be permissible, provided the same discount is offered on the same terms to all consumers who satisfy the stated requirements and is not individually set using personal data. In other words, tiered loyalty discounts would likely be permissible even though customers would be in different tiers, as would birthday discounts, even though customers would have different birthdays. Notably, as the accompanying legislative report states, "some types of discounts—*such as discounts offered for items abandoned in a consumer's cart*—may no longer be permitted under this legislation…" (emphasis added).

The New York City Department of Consumer and Worker Protection ("DCWP") would enforce the ban. Although there would be no private right of action, DCWP would be able to seek civil penalties of up to $1,000 per violation. The bill also provides a 30-day cure period for a small business's first violation. The law would take effect one year after it becomes law.

Takeaway

Businesses that sell to New York City consumers should treat personalized pricing based on personal data as a practice that may soon be prohibited outright, not merely subject to disclosure. Moreover, some common practices, such as abandoned cart discounts, would be prohibited. While there is some time before the law would go into effect, now is the time to confirm whether any pricing tools (proprietary or vendor-supplied) use personal data such as browsing history, location, device type, IP address, cookies, or purchase history; to document that prices are set on market-based factors; to structure any personalized discounts so they are offered uniformly to all qualifying consumers based on the same criteria; to review vendor contracts for pricing-tool representations and indemnities; and to monitor the Mayor's action and the parallel statewide One Fair Price Act.

Please feel free to contact either of the attorneys listed at left if you would like to discuss this matter.

attorney

Andrew B. Lustigman
alustigman@olshanlaw.com
212.451.2258

Morgan E. Spina
mspina@olshanlaw.com
212.451.2343

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