

Ohio (Gig Economy)

1. Does the state have a transportation network company (“TNC”) statute? If so, what are the key components of the TNC statute? If not, have courts determined whether gig workers are employees or independent contractors?

OH REV. Code § 4925 governs transportation network companies (“TNC”) in Ohio. The statute sets forth the permitting process for entities to obtain permits (§ 4925.02) and the duties of the entity, primarily as it pertains to riders and potential riders (§ 4925.03).

Section 4925.02 tasks the public utilities commission with issuing permits and adopting rules for issuance of permits of TNCs. Entities must apply for a permit, pay a five-thousand-dollar (\$5,000) permit fee, and comply with requirements and duties set forth in 4925.03 to 4925.08.

Section 4925.03 requires TNCs to disclose how fares are calculated on their digital networks, charge riders applicable rates charged by the TNC, and provide fee estimates in advance of ride upon request from rider. Additionally, TNCs must have a process to ensure that either the driver’s photograph and license plate number are provided on the TNC’s digital network, or the name of the TNC is prominently displayed on the vehicle. TNCs must also establish payment methods through their networks, and provide riders with receipts digitally within a reasonable time after a services is rendered which includes the origin, destination, distance, time TNC services provided, an itemized total of the fare, and where applicable that the rider paid in cash.

Section 4925.04 sets forth driver requirements including proof of insurance, license information, driving history, and criminal background check.

Section 4925.05 prohibits drivers from logging in to a TNC network or providing TNC services while under the influence of any amount of alcohol or a drug of abuse. This section also provides for a procedure riders can use to report a complaint of drug or alcohol use by a driver, and retention by the TNC of any such complaints.

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Nondiscrimination policies are set forth in section 4925.06. Notably, this section requires TNCs to offer, without additional fee, services to a person with a disability, and where the TNC cannot accommodate a rider in need of a wheelchair-accessible vehicle, the TNC must refer the rider to another provider where possible.

Of note, § 4925.10 articulates that, “except where agreed to by written contract,” a driver is not an agent or an employee of a TNC.

2. What legal theories are available to impute liability to gig companies for personal injury? What defenses are available to gig companies named as co-defendants in personal injury cases? Have any courts found gig companies liable for distracting gig workers while driving?

At least one Ohio court has found that because Ohio Revised Code § 4925.10 is clear that drivers are independent contractors and not employees of TNC companies, plaintiffs cannot sue TNCs under a theory of vicarious liability through respondeat superior. (*Erie Ins. Co. v. Ratchford*, C.P. Nos. 2020CV008, 2021 Ohio Misc. LEXIS 903, granted Uber judgment as a matter of law where Uber was included as a defendant in a suit against a driver who was logged into the App at the time of the accident).

However, in *Snyder v. Bah*, 2020 WL 10356702, (Franklin County Court of Common Pleas), the court denied a 12(b)(6) motion to dismiss by Lyft. This is distinguished from *Erie Ins.* above however because the complaint also alleged negligent hiring and training by Lyft, which are not expressly subject to the protections from employment status contained in the TNC statute, and because it was conceivable that the plaintiff could produce a contract that would fall under the exception, the motion was premature. This indicates that TNCs could be liable for common law negligent hiring, retention, or supervision claims. Lyft ultimately reached a confidential settlement agreement in this matter.

As such, while there is authority in Ohio case law that TNC companies are not subject to imputed liability for the actions of their contractors, at least one court has been willing to consider that common law theories of liability may still be available to TNC companies under Ohio law.

For additional information concerning personal injury liability, please see the ALFA Transportation Compendium for your state.

3. What is the statutory authority for trade secret protection in your state? What are the elements of a trade secret claim, and are any unique? Are there any noteworthy trade secret cases involving the gig economy space?

In 1994, Ohio adopted the Uniform Trade Secrets Act (“OUTSA”), Ohio R.C. § 1333.61, et seq. The OUTSA provides for various remedies to protect trade secrets, including injunctive relief (R.C. 1333.62) exemplary damages for

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willful theft of trade secrets (R.C. 1333.63), and attorney's fees (R.C. 1333.64).

A trade secret claim in Ohio has three elements. A plaintiff must show "by a preponderance of the evidence: (1) the existence of a trade secret, (2) the acquisition of a trade secret as a result of a confidential relationship, and (3) the unauthorized use of a trade secret." *Tomaydo–Tomahhdo L.L.C. v. Vozary*, 82 N.E.3d 1180, 1184 (Ohio Ct. App. 2017), citing *Heartland Home Fin., Inc. v. Allied Home Mortg. Cap. Corp.*, 258 F. App'x 860, 861 (6th Cir. 2008).

The second element requires the plaintiff to establish the existence of some "agreement or understanding of confidentiality" as Ohio courts do not presume such confidentiality within the employer-employee relationship. *R & R Plastics, Inc. v. F.E. Myers Co.*, 92 Ohio App.3d 789, 802 (Ohio Ct. App. 1993). In *R & R Plastics*, the court found no such confidentiality because the employee worked in tandem with the employer in developing the specifications of the device at issue and because the employer allowed visitors to tour the facility without first discussing the confidential nature of the device. *Id.*

In *City of Columbus v. Lyft, Inc.*, the Franklin County Municipal Court granted a protective order to prevent the city from releasing Lyft driver applications to the media, finding that such information constituted a trade secret. The driver applications listed the drivers' names, addresses, and telephone numbers, which are trade secrets by definition pursuant to R.C. 1333.61(D). Further, the Court applied the factors in *Besser* and *Plain Dealer* to determine that the list was a trade secret. Specifically, the driver list derived value because it was not known to competitors, Lyft expended significant resources to develop the information, and any competitor would need to spend a considerable amount of their own resources to obtain that information. *Id.*, (applying six factors in *State ex rel. Besser v. Ohio State Univ.*, 732 N.E.2d 373, 377-78 (2000)).

For additional information concerning trade secrets, please see the ALFA Business Litigation Compendium for your state.

4. What state data privacy laws potentially apply to gig companies? What companies and what kinds of data are covered?

Ohio's Data Protection Act (DPA) provides companies with a safe harbor against data breach tort claims in Ohio for companies that implement, maintain, and comply with one of several industry-recognized cybersecurity programs such as Title V of the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act (HIPAA), Center for Internet Security's Critical Security Controls (CIS CSC), or National Institute of Standards and Technology (NIST) Cybersecurity Framework. There is no private cause of action under the DPA. The law applies broadly to any business that "accesses, maintains, communicates, or processes personal information or restricted information." R.C. 1354.01. Personal information refers to "an individual's name, in combination with and linked to any one or more of the following data elements, when the data elements are not encrypted, redacted, or altered by any method or technology in such a manner that the data elements are unreadable: (i) Social security number; (ii) Driver's license number or state identification card number; (iii) Account number or credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual's financial account." R.C. 1349.19. Restricted information" is any unencrypted information about an individual that can be "used to distinguish or trace the individual's identity." R.C. 1354.01.

5. What is the status of arbitration with users of gig platforms and gig workers? How do courts treat motions to compel arbitration? Are there any noteworthy cases involving arbitration in the gig economy space?

Ohio has consistently favored the enforcement of arbitration provisions in contracts. R.C. 2711.01(A) provides that arbitration provisions will be enforced unless grounds exist in law or equity for revocation of the contract. R.C. 2711.03 requires a trial court to hold an oral hearing on a party's motion to compel arbitration. An arbitration agreement may be enforced through an order directing parties to proceed to arbitration, pursuant to R.C. 2711.03; a stay of trial court proceedings pending arbitration, pursuant to R.C. 2711.02; or both. *Snyder v. Old World Classics*, 9th Dist. Medina No. 2023CA0019-M, 2023-Ohio-4019, ¶ 7, citing *Shillingburg v. Turtle Creek Assets, Ltd.* 9th Dist. Summit No. 29113, 2019-Ohio-1156, ¶ 5.

In *GigSmart, Inc. v. AxleHire*, the First District Court of Appeals found that the trial court did not abuse its discretion in granting a motion to compel arbitration and preliminary injunction against AxleHire. GigSmart is a platform that staffs the gig economy. GigSmart filed a breach of contract claim against AxleHire and a motion to compel arbitration on that claim. AxleHire then filed suit against GigSmart, alleging that the arbitration clause was unenforceable because it did not agree to arbitrate against GigSmart. The Court found that AxleHire assented to the terms and conditions of GigSmart's platform, including a binding-arbitration clause, when it created an account on GigSmart's platform and that GigSmart was likely to prevail on the merits given that AxleHire assented to the terms and conditions, including arbitration. *GigSmart, Inc. v. AxleHire, Inc.*, 226 N.E.3d 1073, 1091 (2023).