

## Oregon (Gig Economy)

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### 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?

Yes, Oregon does have a transportation network company (TNC) statute. A TNC is defined as a corporation, LLC, partnership or other association that facilitates ride-sharing services through a digital application. ORS § 742.518(12). Examples would include Uber and Lyft, but not other gig company services like UberEats or DoorDash.

Oregon’s TNC statute does not dictate whether gig workers are employees or independent contractors. Whether a gig worker is an independent contractor or employee would be determined using one of three tests depending on issue. These tests are:

1. Right to control test: Used for most common law claims and under Oregon’s anti-discrimination and leave laws.
2. Economic-realities test: Used for wage and hour issues.
3. Relative nature of the work test: Used for workers compensation claims.

Because these tests apply somewhat differing standards, it is possible for an individual to be deemed an independent contractor for some purposes and an employee for others.

### 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?

Under Oregon common law, personal injury liability can be imputed to gig companies via vicarious liability. Vicarious liability holds a supervisory party liable for certain wrongdoings of subordinates. Vicarious liability can occur in several situations including employer-employee relationships (known as respondeat superior), or occasionally independent contractor relationships

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(known as principal-agent theory).

Gig companies that are found liable as co-defendants under vicarious liability can be entitled to many of the same defenses as their employees or agents, thus lessening their potential liability. Depending on the applicable law, gig companies can be entitled to defenses including contributory negligence, comparative negligence (or comparative fault), assumption of the risk, lack of employer-employee relationship, and showing an agent was acting outside the scope of their agency/employment (i.e. frolic versus detour). *Tort Law in Oregon*, Chapter §9.2-9.3, 15.2-1 (OSB Legal Pubs 2024), ISBN# 978-1-63866-072-9.

No Oregon courts have found gig companies liable for distracting gig workers while driving.

*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?**

The Oregon Uniform Trade Secrets Act (UTSA) (ORS § 646.461-646-475) is the statutory authority for Oregon's trade secret law. To prove a claim under the UTSA, a person must prove they have a trade secret, and that said trade secret has been misappropriated. ORS 646.461(1); *see also* Pfizer, Inc. v. Oregon DOJ, No. 08C25784, 2009 WL 9049334 (Or. Cir. 2009).

ORS 646.461(4) defines a "trade secret" as information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that: (a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Oregon's definition of a trade secret is unique in that it is broader than the national UTSA definition because Oregon's definition also includes drawings, cost data, and customer lists.

"Misappropriation" is defined under ORS § 646.461(2)(b) and generally requires proving that a person either used or disclosed a trade secret without express or implied authorization.

A noteworthy trade secret dispute in Oregon in the gig economy space involves a 2016 public records request made by Oregon newspapers for Uber and Lyft ride data held by the City of Portland. In the dispute, Oregon Circuit Court Judge Matarazzo sided with Uber and Lyft, ruling that the records were trade secrets under Oregon's public records law and protected from public disclosure. *Rasier, LLC v. City of Portland, et al.*, Mult. Co. Cir. Ct. Case No. 16CV31985 (consolidated with *Lyft Inc. v. City of Portland, et al.*, Mult. Co. Cir. Ct. Case No. 16CV32174).

*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?

The Oregon Consumer Privacy Act (ORS § 646A-570-646A.589) is Oregon’s statutory consumer privacy law. The Oregon Consumer Privacy Act requires certain transparency and data usage disclosure obligations on what are called “controllers,” or certain larger businesses or businesses conducting a significant portion of their business in Oregon. The definition of “controller” is defined as:

1. An individual or legal entity who, alone or jointly with another person, determines the purposes and means for processing personal data *who either*:
  - a. conducts business in Oregon; *or*
  - b. produces products or services that are targeted to the residents of Oregon;
2. *and* that during a calendar year *either*:
  - a. controls or processes personal data of at least 100,000 Oregon residents, excluding personal data controlled or processed solely for the purpose of completing a payment transaction; *or*
  - b. controls or processes personal data of at least 25,000 Oregon residents and derives more than 25 percent of its gross revenue from the sale of personal data. ORS 646A-570(8); 646A-572(1).

The Oregon Consumer Privacy Act applies to “personal data” (i.e. an individual consumer’s information gathered online or at physical store locations), and “sensitive data” (personal data including a consumer’s race, gender, religion, national origin, sexual orientation, citizenship or immigration status). ORS 646A-570(13(a)-(b) and 18(a)); *see also* ORS 646A-578(1). *See* ORS 646A-572(2) for what types of data are not subject to the Oregon Consumer Privacy Act.

#### 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?

Oregon is not hostile to arbitration clauses and makes no distinction for arbitration with users of gig platforms and gig workers. The Oregon Uniform Arbitration Act (ORS § 36.600-36.740) is Oregon’s statutory authority governing arbitration agreements and arbitration in Oregon. If a party wants to compel arbitration, said party must file a petition to compel arbitration with the appropriate Oregon state or federal court. ORS § 36.625(1). The court will then decide (1) whether there is a valid arbitration agreement and (2) whether the parties’ dispute falls within the scope of the arbitration agreement. *Id.* at (1) and (2). Oregon courts employ a presumption in favor of arbitration clauses. Livingston v. Metro. Pediatrics, LLC, 227 P.3d 796, 803 (Or. Ct. App. 2010).

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There are no noteworthy cases in Oregon involving arbitration in the gig economy space.