

Louisiana (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?

Louisiana enacted a series of statutes that define TNCs, provide instructions for service of process, provides for TNC permits, as well as sets forth fare transparency, insurance requirements, driver requirements, and so forth. See La. R.S. §§ 48:2191 to 48:2205.

Louisiana TNC Permits

Under La. R.S. § 48:2193, “a person shall not operate a company in the state of Louisiana without first obtaining a permit from the department [of transportation].” If a TNC company was operating before July 1, 2019, they can continue operating until the department creates a permitting process and sets a regulation deadline. The company is required to provide the department with a certificate of insurance verifying compliance with La. R.S. § 45:201.6 and listing the department as a certificate holder.

TNC Insurance Requirements

La. R.S. § 45:201.6 requires TNCs to maintain primary automobile insurance that provides for specific limits and requirements based on the status of a ride. There are different requirements for a pre-trip ride and during a ride:

Pre-Trip Acceptance Policy Limits:

- Not less than \$50,000 for death and bodily injury per person
- Not less than \$1,000,000 for death and bodily injury per accident
- Not less than \$25,000 for property damage
- Include uninsured/underinsured coverage

During a Pre-Arranged Ride:

- Not less than \$1 million for death, bodily injury, and property damage
- Include uninsured/underinsured motorist coverage

The obligation to maintain a policy if insurance as described above can be met by the TNC, the TNC driver, or a combination of the two.

TNC Driver Requirements

Louisiana law is silent as to classifying whether gig workers are employees or independent contractors. However, La. R.S. § 48:2199 requires that a TNC complete an extensive background history for gig workers before the individual is authorized to accept trip requests through a TNC’s digital network.

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?

Louisiana is a pure comparative fault state, meaning that any party can be held liable for a portion of their negligence in a personal injury lawsuit, which could include a gig company under certain theories of negligence.

Respondeat Superior

Under Louisiana law, an employer can be found vicariously liable for the negligent acts and omissions of its employees. This, however, does not apply to independent contractors. The major factor for determining whether there is an independent contractor or employer-employee relationship for the purpose of vicarious liability is the employer's control over the work. *Franklin v. Dick et al.*, 51,479-CA (La. App. 2 Cir. 6/21/17); 224 So. 3d 1130, 1134. Where there is a distinct lack of control over a worker, there is no employer-employee relationship. *Id.* For example, a worker who sets their own hours, earns own money, receives no salary, and determined how they completed their work is considered an independent contractor. *See id.* Thus, a gig company who does not have control over the gig worker's hours, means of completing their work, and does not pay their salary could not be held liable under the theory of *respondeat superior*.

Negligent Hiring

Louisiana jurisprudence has recognized that one who hires an irresponsible independent contractor can be found independently negligent. *Lafayette Steel Erector, Inc. v. G. Kendrick, LLC*, 2022-0895 (La. App. 1 Cir. 8/30/23); 375 So. 3d 507, 514 (citing *Evans v. Allstate Ins. Co.*, 1942 So. 2d 726, 767 (La. App. 1 Cir. 1867); *Hemphill v. State Farm Ins. Co.*, 427 So. 2d 320, 324 (La. App. 3 Cir. 1985). To determine whether a company is negligent for hiring an irresponsible contractor, Louisiana Courts look to what the company knew at the time the independent contractor was hired. *Id.* at 515. "A claim for negligent hiring is cognizable only if the claimant can show that the principal had knowledge when it hired the independent contractor that the independent contractor was irresponsible, and negligent conduct that occurs after the hiring is not determinative of the claim." *Id.*

Under La. R.S. § 48:2199, TNCs must perform an extensive background check on the gig worker, including but not limited to completing a local and national criminal background check and a driving history report. "The gig company shall not authorize an individual to act as a driver if the individual's initial background check reveals the individual

(1) Has had more than one of the following violations within the three-year period prior to applying to the company:

- (a) Flight from an officer or aggravated flight from an officer
- (b) Reckless operation of a vehicle
- (c) Operating a vehicle while under suspension for certain prior offenses

(2) Has been convicted, within the past seven years, of:

- (a) Any enumerated felony as provided for in Title 14 of the Louisiana Revised Statutes of 1950, comprised of R.S. 14:1 through 601.
- (b) Operating a vehicle while intoxicated
- (c) Hit and run driving
- (d) Any crime of violence as defined in R.S. 14:2(B).

(3) Is listed as an offender in the national sex offender public website maintained by the United States Department of Justice.

(4) Does not possess a valid driver's license to operate a personal vehicle.

(5) Does not possess the required registration to operate a motor vehicle used to provide prearranged rides.

Distracted Driving

Under La. R.S. 32:300.5, no person shall operate a motor vehicle while driving on a public road or highway while using a wireless device to (1) write, send, or read a text-based of communication, or (2) access, read, or post to a social networking site. This statute does not apply to navigating while using GPS.

Louisiana law is silent as to any applications used by rideshare drivers or for gig purposes that imputes specific liability on gig companies.

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?

Louisiana Uniform Trade Secrets Act

Louisiana's Uniform Trade Secrets Act ("LUTSA") is codified as La. R.S. § 51:1431, et seq. Louisiana's Uniform Trade Secrets Act shares significant similarities to its federal counterpart, the model Uniform Trade Secrets Act ("UTSA"). Unlike the UTSA, LUTSA does not allow for exemplary damages. La. R.S. 51:1433. Additionally, LUTSA does not permit the complainant to recover damages measured by a reasonable royalty in lieu of actual loss or unjust enrichment.

Elements of Misappropriation of a Trade Secret

To state a claim under LUTSA, a plaintiff must allege (1) the existence of a trade secret, and (2) the misappropriation of the trade secret by another. La. § 51:1431(1); *see also Bernhard MCC, LLC v. Zeringue*, 19-CA-529 (La. App. 1 Cir. Sep. 9, 2020); 303 So. 3d 372, 378. Misappropriation of a trade secret is defined as "use of a trade secret without express or implied consent by a person who: (i) used improper means to acquire knowledge of the trade secret; or (ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: . . . (bb) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use." La. § 51:1431(2)(b).

Under La. § 51:1431 (4), a "trade secret" means information including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential from not being generally known to and not being readily ascertainable by proper means by 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. The statute provides for a complete catalogue of means that are improper including theft, bribery, misrepresentation, breach, or inducement of breach of a duty to maintain secrecy, or espionage through electronic or other means. La. § 51:1431(1).

Whether information is a trade secret is a question of fact. *Millet v. Crump*, 96-939 (La. App. 5 Cir. 12/30/1996); 687 So. 2d 132, 135. The holder of a property right in a trade secret extinguishes the right if it is disclosed to others with no obligation of confidentiality. *Sheets v. Yamaha Motors Corp.*, 849 F.2d 179, 183-84 (5th Cir. 1988) (applying the Louisiana Uniform Trade Secrets Act).

Louisiana courts and federal courts applying Louisiana law found the following types of information to be protectable trade secrets under the circumstances: 1) The method and process of assisting and instructing businesses in a particular industry; and 2) customer and special pricing lists where the owner took reasonable

efforts to maintain their secrecy. *S. E. Auto Dealers Rental Ass'n, Inc. v. EZ Rent to Own, Inc.*, 980 So. 2d 89, 99-100 (La. App. 4 Cir. 2/27/2008); *Fox*, 164 So. 3d at 364; *Pontchartrain Med. Labs, Inc. v. Roche Biomedical Labs., Inc.*, 95-2260 (La. App. 1 Cir. 6/28/1996); 677 So. 2d 1086.

Louisiana courts have held that customer lists can be protected as trade secrets if efforts are made to protect their confidentiality. *Bihm v. Deca Sys., Inc.*, 2016-0356 (La. App. 1 Cir. 8/8/ 2017); 226 So. 3d 466, 484–85; *Pontchartrain Med. Labs*, 677 So. 2d at 1090.

However, courts are unlikely to consider customer lists trade secrets if the information is readily available. For example, the Louisiana Second Circuit Court of Appeal held that a customer list was not a trade secret because the names and numbers of the hospitals and other medical providers were easily accessible through the local telephone book. *Nursing Enters., Inc.*, 30,776 (La. App. 2 Cir. 8/19/98); 719 So. 2d at 529-30. Additionally, customer lists are not deemed “trade secrets”, when customer lists including firms that were widely known in the industry. *Creative Risk Controls, Inc. v. Brechtel*, 01-1150 (La. App. 5 Cir. 4/29/03); 847 So. 2d 20, 25-26.

Louisiana courts have not ruled specifically on any misappropriation of trade secrets in the gig economy, but these principles can be applied to all areas of trade secrets involved in the gig economy space.

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

Louisiana's Data Privacy Laws

Louisiana's data privacy laws potentially applying to gig companies include La. R.S. § 51:3073, et seq. which governs the protection of personal information and disclosure upon breach in the security of personal information. La. R.S. § 51:3074 applies to any person that conducts business in the state or that owns, maintains or licenses computerized data that includes personal information. Pursuant to this statute, it is incumbent upon the applicable person or business to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. *Id.*

Gig and platform companies gather vast amounts of data from their workers to improve services and enhance customer experience. This data collection includes personal information such as names, addresses, contact details, and financial data. While this data is necessary for efficient operations, it raises concerns about how it is collected, stored, and shared by these companies.

For instance, Uber, as a ride-hailing platform, collects location data from drivers to match them with passengers. While this data is crucial for the service to function, there is a need for transparency and clarity on how long the data is retained, who has access to it, and how it is protected from unauthorized use.

The gig economy relies heavily on digital platforms and technology, making workers susceptible to security breaches and data vulnerabilities. If gig and platform companies fail to implement robust security measures, it puts workers' personal and financial information at risk. Data breaches can lead to identity theft, financial fraud, and other cybercrimes, causing significant harm to workers.

In 2016, Uber suffered a data breach where personal information of 57 million users and drivers were compromised. Such incidents underscore the need for stringent data protection measures and accountability in the

gig economy.

Additionally, recent class action lawsuits allege that Meta Pixel code potentially analyzed, gathered and shared the sensitive medical data of hundreds of thousands of patients across the LCMC Health Systems and Willis-Knighton Health System networks. By way of example, *See Horton v. Willis-Knighton Medical Center*, 2023 WL 5346133 (W.D. La. 2023); *Jane Doe v. LCMC Health Holdings, Inc.*, 2022-10417, (Civil District Court of Orleans Parish 2022).

Pixel technology uses a Java tracking script to send an organization's data to the technology owner, which in this case is Meta, owner of Facebook, Instagram and WhatsApp. Tracked data could be shared with network marketing partners who target individuals with offers and advertisements.

The new class action lawsuit alleges that visitors to the health system websites may have had their protected health information – medical conditions, prescriptions, doctors' names and previous appointments – sent to Facebook when they scheduled appointments online or through patient apps.

"In one case, for example, a woman received targeted ads about heart disease and joint pain shortly after entering her information into one of the hospital websites," the firm said in the announcement.

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?

Under Louisiana law, Arbitration is a matter of contract that cannot be compelled unless the parties agree to arbitrate. *See Prasad v. Bullard*, 10-291 (La. App. 5 Cir. 10/12/10); 51 So. 3d 35, 39. "There is a strong presumption in favor of arbitration." *Id. citing Aguillard v. Auction Management Corp.*, 04-2804, pp. 24-25 (La. 6/29/05); 908 So. 2d 1, 18. "[E]ven when the scope of an arbitration clause is fairly debatable or reasonably in doubt, the court should decide the question of construction in favor of arbitration." *Id.*

The Louisiana Binding Arbitration Law ("LAL") determines the validity, irrevocability, and enforceability of arbitration agreements. La. R.S. § 9:4201. The LAL, which mirrors the Federal Arbitration Act, provides specific enforcement for arbitration. For this reason, federal jurisprudence provides additional guidance for resolving arbitration issues. *Aguillard*, 908 So. 2d 1, at 25. A court must consider two factors when determining whether to compel arbitration: (1) whether there is a valid arbitration agreement and (2) whether the dispute in question falls within the scope of the agreement. *Prasad*, 51 So. 3d 35, at 39.

While there is no specific Louisiana jurisprudence or statutory law that requires arbitration among gig workers, gig platform users, and gig companies, the same principles as discussed above would apply to arbitration agreements between gig workers and gig companies.