

## Missouri (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?

MO. REV. STAT. § 387.400(4) defines a TNC as “a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to sections 387.400 to 387.400 and operating in the state of Missouri, that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. A TNC shall not be deemed to own, control, direct, operate, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to be written contract.”

### 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?

Missouri courts may impute liability under common law theories of vicarious liability. Respondeat superior imposes vicarious liability on employers for the negligent acts or omissions of employees or agents as long as the acts or omissions are committed within the scope of the employment or agency.” *Papa John’s USA, Inc. v. Allstate Ins. Co.*, 366 S.W.3d 116, 120 (Mo. App. W.D. 2012). Companies may be liable for the negligent acts or omissions of independent contractors if a principal-agent relationship is established. *Lindquist v. Scott Radiological Group, Inc.*, 168 S.W.3d 635, 655-56 (Mo. App. E.D. 2005). Generally, the relationship is a question of fact to be determined by the jury, and agency is “established where: (1) the principal must either expressly or impliedly consent to the agent’s acting on the principal’s behalf; and (2) the agent is subject to the principal’s control.” *Id.*, citing *Scott v. SSM Health Care St. Louis*, 70 S.W.3d 560, 566 (Mo. App. E.D. 2002). Rideshare companies are frequently added as co-defendants in personal injury cases, with plaintiffs alleging principal-agent, independent contractor, and/or employer-employee relationships.

However, there are no significant Missouri appellate cases addressing the principal-agent relationship in the gig economy space, nor appellate cases addressing distracted driving by rideshare drivers.

*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?**

Missouri has adopted the Uniform Trade Secrets Act (“MUTSA”). Mo. REV. STAT. § 417.450, *et seq.* The MUTSA provides for injunctive relief for actual or threatened injury. Mo. REV. STAT. § 417.455. A claim for misappropriation requires either acquisition of the trade secret by improper means or disclosure without express or implied consent. § 417.453(2).

A “trade secret” is defined as “information, including but not limited to, technical or nontechnical data, 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.”

There have been no noteworthy trade secrets cases in the gig economy space.

*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?**

Answer: Missouri does not have a state data or biometric privacy law, although several laws have been introduced in the state legislature in recent years. Companies who retain consumers’ personal information (Social Security number, driver’s license number, financial account number, credit or debit card number, or certain medical information) must notify the consumer in the event of a data breach. Mo. REV. STAT. § 407.1500. The notice to consumers must include, at a minimum, a description of

(a) “The incident in general terms;

(b) The type of personal information that was obtained as a result of the breach of security;

- (c) A telephone number that the affected consumer may call for further information and assistance, if one exists;
- (d) Contact information for consumer reporting agencies;
- (e) Advice that directs the affected consumer to remain vigilant by reviewing account statements and monitoring free credit reports.”

Mo. REV. STAT. § 407.1500.2(4)(a)-(e).

## 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?

Missouri Courts are not hostile to arbitration, and the Missouri Uniform Arbitration Act (“MUAA”), Mo. REV. STAT. § 435.350, *et seq.*, is similar to the Federal Arbitration Act in most material respects. Any written agreement to submit a dispute to arbitration, except contracts of insurance and contracts of adhesion, is enforceable. Mo. REV. STAT. § 435.350. Missouri does not have a specific law addressing arbitration agreements in the gig economy space. In Missouri, “[s]tate contract law governs whether the parties have entered into a valid arbitration agreement.” *Blevins v. Teletech Holdings, Inc.*, No. 19-03121-CV-S-DPR, 2019 U.S. Dist. LEXIS 121809, at \*6 (W.D. Mo. July 22, 2019), citing *Robinson v. EOR-ARK, LLC*, 841 F.3d 781, 784 (8th Cir. 2016).

In the Eighth Circuit, and in Missouri, courts adopt a “summary judgment-like” standard for evaluating motions to compel arbitration. Assent is an often hotly-contested issue in determining contract formation on a motion to compel arbitration, but the focus is whether the plaintiff had “reasonable notice of and manifested assent to the online agreement.” *Burcham v. Expedia, Inc.*, 2009 U.S. Dist. LEXIS 16194, at \*2 (E.D. Mo. Mar. 6, 2009). Missouri courts accept that “[a]ssent is manifested expressly on clickwrap sites.” *Major v. McCallister*, 302 S.W.3d 227. Under Missouri law, a user may assent to the Terms and Conditions by clicking an “I accept” button, even if the Terms and Conditions are not actually accessed and reviewed, as long as a link to the Terms and Conditions is conspicuously displayed. *Margulis v. Homeadvisor, Inc.*, No. 4:19-cv-00226-SRC, 2020 U.S. Dist. LEXIS 144699, at \*13 (E.D. Mo. Aug. 12, 2020).

Gig workers and gig customers alike may be compelled to arbitration. *Fambrough v. Green*, No. 4:19-00158-CV-RK, 2019 U.S. Dist. LEXIS 164822, at \*10 (W.D. Mo. Sep. 26, 2019). For more information about arbitration involving gig workers, independent contractors, and employees, see ALFAI Missouri Labor & Employment Compendium. Consumers may also be compelled to arbitration. *Holm v. Menard, Inc.*, 618 S.W.3d 669 (Mo. App. W.D. 2021). However, courts will entertain challenges to an agreement on unconscionability grounds, such as where the consumer is required to bear the costs of arbitration. See *Whitney v. Alltel Communications, Inc.*, 173 S.W.3d 300, 313 (Mo. App. W.D. 2005) (abrogated on other grounds in *Brewer v. Mo. Title Loans, Inc.*, 323 S.W.3d 18 (Mo. 2010)). However, class action waivers are generally enforceable. *Robinson v. Title Lenders, Inc.*, 364 S.W.3d 505, 507 (Mo. banc 2012).

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Missouri courts have not applied different standards to the gig space, and there are no other noteworthy cases, although arbitration is frequently compelled, *see Fambrough v. Uber Techs.*, No. 4:19-cv-0952-DGK, 2020 U.S. Dist. LEXIS 103538 (W.D. Mo. June 12, 2020).