



# Enjoy The Ride! Texas Ride-Sharing Businesses Can Now Escape Misclassification Battles

Insights

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Texas Governor Greg Abbott just signed into law a measure that will regulate ride-sharing companies (H.B. 100) by establishing a consistent statewide framework to govern such businesses. The good news for ride-sharing businesses: by following some very simple steps, you can avoid costly misclassification lawsuits by ensuring your workers are classified as independent contractors. The law was effective as of the date of signing – May 29 – and overruled all local ordinances in Texas that had previously regulated ride-sharing businesses.

## **Big For Gigs: Independent Contractor Status Assured**

The new law gained mainstream media attention by ensuring ride-sharing giants Uber and Lyft would return to the City of Austin; the city had instituted a fingerprint check process in 2016 that caused both companies to withdraw service. As a result of the new law, both companies announced that they would return to doing business in Austin on June 5, 2017.

However, one of the most important parts of the bill ensures that drivers in these ride-sharing services (called “transportation network companies,” or TNCs) – defined as entities using a digital network to connect a rider to a driver to provide prearranged rides – are independent contractors as long as four simple requirements are met:

1. The TNC cannot prescribe specific hours during which drivers should be logged into the digital network;
2. The TNC must permit drivers to work for other ride-sharing services;
3. The TNC must allow drivers to engage in any other occupation or business they desire; and
4. The TNC cannot limit the territory within which the driver may provide digitally prearranged rides.

These requirements are fairly typical for sharing economy companies, so it will not be difficult for most businesses to adapt to this provision of the law and gain the protections it will afford. The value of adopting these requirements to gain a defense from misclassification challenges cannot be overstated. Ride-sharing giants Uber and Lyft have both been caught up in multimillion dollar class action lawsuits from groups of drivers who allege they were actually employees and not contractors, seeking payment for alleged wage and hour violations and other benefits. And they

aren't alone; many smaller entities have also been on the receiving end of such legal claims, hampering their ability to grow in a competitive business environment.

To be able to avoid the specter of such a claim will be a major coup for ride-sharing companies. H.B. 100 undoes local rules that Uber and Lyft have argued are overly burdensome for their business models. It requires ride-hailing companies to have a permit from the Texas Department of Licensing and Regulation and pay an annual fee of \$5,000 to operate throughout the state. It also calls for companies to perform local, state and national criminal background checks on drivers annually — but doesn't require drivers to be fingerprinted.

The bill specifically ensures that local municipalities cannot do an end-around to bypass the state rules, as any local laws regarding TNCs will no longer be effective. This will prevent worker-friendly cities or counties from adding additional requirements or otherwise contravening the state law.

### **Ride-Sharing Companies Must Meet Other Requirements**

Besides the insurance requirement, the new law will also require a few other responsibilities for ride-sharing companies. However, given the relatively light burden these requirements will add and the major benefit of the classification provision, most Texas companies should gladly accept these as part of an efficient compromise with the state.

Among the additional requirements:

- TNCs must enact a zero-tolerance policy when it comes to drug or alcohol use among its drivers, and if it receives a complaint alleging a violation of the policy, it must suspend the driver from using the digital platform until an investigation is conducted;
- TNCs must also adopt a nondiscrimination policy with respect to riders and potential riders (including following applicable laws regarding service animals), and are required to reevaluate any drivers who receive low quality ratings because of alleged violations of this policy;
- TNCs must conduct a national criminal background check and a driving history research report for each driver before permitting use of the digital platform and every three years thereafter, and are restricted from using drivers with certain infractions prescribed by the law;
- TNCs must provide riders with electronic receipts within a reasonable period after the end of a ride; and
- The fare, or the fare calculation method, must be communicated to the rider via website or app before the beginning of the prearranged ride.

### **What Does This Mean For Sharing Economy Companies?**

This is undoubtedly good news for ride-sharing companies in Texas, who now will be provided much-needed certainty about how to avoid misclassification battles. But what about other sharing economy entities in Texas, and what about other gig economy companies throughout the country?

For now, gig businesses in Texas can be envious of the position that ride-sharing companies now enjoy. The next step, of course, is for this law to be expanded to other digital businesses in the state, and to be replicated by state legislatures across the country. Florida has already passed such a law, effective July 1, 2017. Perhaps other statehouses will watch the impact that this law has before proceeding with their own versions of this law, ensuring it brings a fair and equal balance between worker and company prior to taking the plunge themselves. To stay up to speed on the latest developments, we encourage you to regularly visit our Gig Economy Blog.

For more information, contact any member of our Gig Economy Practice Group, your regular Fisher Phillips attorney, or one of the attorneys in our Texas offices:

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