



Mark Gordon
Governor

State of Wyoming Department of Workforce Services

Office of the Director
614 South Greeley Highway
Cheyenne, Wyoming 82007
307.777.8650 ■ Fax: 307.777.5857
www.wyomingworkforce.org



Robin Sessions Cooley
Director

November 22, 2019

Honorable Drew Perkins
Wyoming State Senate
1133 Granada Ave.
Casper WY 82601

Honorable Eric Barlow
Wyoming House of Representatives
1625 A Buffalo Cut Across Road
Gillette WY 82718

Dear Senator Perkins and Representative Barlow:

Thank you for the opportunity to discuss the impact of the Coal/Mineral Bankruptcies at your October 14, 2019 meeting. Attached, please find follow-up information requested during that meeting. The Department of Workforce Services looks forward to further discussing these details in person at a future meeting.

Sincerely,

Robin Sessions Cooley, J.D.
Director

RSC:mjp
Enclosures

Cc: Coal/Mineral Bankruptcies Committee Members

Hayley McKee, Administrator, Policy, Research & Communications
Holly Simoni, Administrator, Workforce Programs
Jason Wolfe, Administrator, Workforce Standards

As public servants, we work hard every day to help ensure
safe and fair workplaces with qualified workers

Select Committee on Coal/Mineral Bankruptcies

Prepared by the Wyoming Department of Workforce Services (WFS)

1. What amount of federal funding did WFS receive for FY 2020 to address emergency employee assistance activities? Was any amount of these federal funds specific to the Blackjewel bankruptcy? If so, how much?

- i. The Department of Workforces (Department) receives federal funding under the Workforce Innovation and Opportunity Act (WIOA) for Rapid Response activities. These services are available through the Dislocated Worker Program under WIOA. For FY 2020, a total of \$124,745.41 is available to provide Rapid Response services. These activities include assistive services to access unemployment benefits, business engagement for early layoff aversion strategies, referrals to community offerings, career services including training opportunities, resume preparation, interview strategies, and labor market information for rapid re-employment options, among other services.
- ii. In July of 2019, after the bankruptcy and unexpected closure of the Blackjewel, LLC (Blackjewel) coal mine in Gillette, the Department applied for, and received, a modification to an existing grant of funds under the Partnerships for Opportunity and Workforce and Economic Revitalization program (POWER). The modification was granted to allow use of the funds for any dislocated mine worker in the state, and provides funding for workplace planning, training, and supportive services.
- iii. This grant was approved for up to \$2,000,000 with an initial award of \$1,080,465. The grant modification extends the period of performance through 6/30/2021.

a. Was any amount of these federal funds specific to [the] Blackjewel bankruptcy? If so, how much?

- i. The POWER grant modification noted above was requested by the Department in order to be responsive to individuals impacted by the Blackjewel layoffs. Through the modification, these monies have been made applicable to any future coal mine closure through the period of performance.
- ii. Additionally, payroll costs for 15 employees directly involved in the WIOA Rapid Response efforts for the Blackjewel layoffs totaled \$21,345.54. This figure represents costs for July of 2019, when the Rapid Response activities occurred.

b. What amount of federal funding does WFS expect to receive in the future? (July 1, 2019 – June 30, 2020)

- i. In relation to standard federal workforce development funding, the agency has received the following for the time period noted:
 1. Wagner-Peyser: \$3,583,481
 2. WIOA Adult: \$2,108,605

3. WIOA Dislocated Worker: \$1,087,106

4. WIOA Youth: \$2,219,198

2. What are the eligibility requirements on the beneficiaries and parameters of authorized expenditures of such funds?

i. Adult Program: Participants in the Adult Program must be 18 years or older and meet one or more of the following eligibility requirements:

1. Basic skills deficient;
2. English language learner;
3. Recipient of public assistance (POWER);
4. Low income individual (must meet one of the following 4 criteria):
 - a. Receiving or received SNAP benefits in last 6 months;
 - b. Participating in the POWER program;
 - c. Currently homeless;
 - d. Have a total family income (regardless of current employment status) for a six-month period that does not exceed the higher level of the poverty line or 70% of the Lower Living Standard Income Level.

ii. Dislocated Worker Program: The Dislocated Worker Program generally applies to individuals who have lost their job through no fault of their own. Participants in the Dislocated Worker Program must be 18 years or older and meet one or more of the following eligibility requirements:

1. Has been terminated or laid off, or has received notice of termination or layoff from employment, and is eligible for, or has exhausted entitlement to Unemployment Insurance (UI), and is unlikely to return to a previous industry or occupation;
2. Has been terminated or laid off, or has received notice of termination or layoff from employment, and has been employed for sufficient duration to demonstrate attachment to the workforce (employed for at least 60 consecutive days out of the past 24 months), but is not eligible for UI due to insufficient earnings, or having performed services for an employer that was not covered under UI, and is unlikely to return to previous industry or occupation;
3. Has been terminated or laid off, or has received notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

4. Is employed at a facility at which the employer has made a general announcement that such facility will close within the next 180 days;
 5. Self-employed but is no longer working as a result of general economic conditions;
 6. Is a displaced homemaker, meaning the individual has been providing unpaid services in the home and is dependent on the income of another family member but is no longer supported by that income;
 7. Is the spouse of a member of the Armed Forces on active duty, and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member;
 8. Is a spouse of a member of the Armed Forces who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
- iii. Youth Program: The Youth Program is intended to support in- and out-of-school youth, ages 14-24, who face barriers to education, training, and employment. The specific eligibility requirements are outlined below:
1. In-school youth:
 - a. Attending High School or Postsecondary school (enrolled);
 - b. Not younger than 14 or older than 21;
 - c. A low-income individual; and
 - d. One or more of the following:
 - i. Basic skills deficient;
 - ii. English language learner;
 - iii. Offender;
 - iv. Homeless individual, age 14 to 21, or a runaway;
 - v. Foster child or aged out of foster care or out-of-home placement;
 - vi. An individual who is pregnant or parenting;
 - vii. An individual with a disability
 2. Out-of-school youth:
 - a. Not attending any school (as defined by state law);

- b. Not younger than 16 or older than 24 at the time of enrollment;
- c. One or more of the following:
 - i. School dropout;
 - ii. Within the age of compulsory school attendance (age 7-15 or completes 10th grade), but has not attended school for at least the most recent complete school year calendar quarter;
 - iii. Recipient of a high school diploma or equivalent who meets low income requirement and is:
 - 1. Basic skills deficient; or
 - 2. An English language learner
 - iv. An individual who is an Offender;
 - v. Homeless, runaway, foster child, aged out of foster care, or out-of-home placement;
 - vi. An individual who is pregnant or parenting;
 - vii. An individual with a disability
- iv. Before any WIOA service can be provided (an expenditure can occur), the Workforce Specialist must:
 - 1. Document the need or justification for the service;
 - 2. Meet with the participant prior to the service being rendered and create an Agreement to pay for such service. The agreement must be printed, signed, and dated before the service occurred; and
 - 3. Add the new service on the WIOA Participant's Plan.
- a. **Can the funds support both health insurance purchases and health provider procedures?**
 - i. The purpose of WIOA is to improve the quality of the US workforce, reduce dependency on welfare programs, increase self-sufficiency, meet hiring needs for employers, and connect job seekers with training opportunities.
 - ii. Supportive services are designed to overcome barriers that impact this goal, which can include healthcare services. However, WIOA can only cover the following:

1. Health insurance premiums (on a month-by-month basis for the WIOA participant only), if the participant is actively engaged in a training program and/or is actively looking for work.
2. Planned medical costs for procedures that become barriers to the participants achieving their WIOA employment and/or training goal. These procedures cannot impact the participants' ability to be actively engaged in the planned training and/or be job ready.

Category: PNA: Health Care (When not covered by Health Insurance)			
Thresholds:	\$500.00 Threshold Can cover services such as eye exams and glasses/contacts; medication, medical exams, emergency dental care, etc.	Limitations:	\$1,000.00 Limit

b. Can the funds support both health (insurance or procedures) for just the minor or dependents?

- i. All support services are for the active WIOA participant only, and do not include coverage for family members or dependents. This includes any healthcare coverage. Therefore, if a health insurance premium is covered, it applies to the WIOA participant only.

c. What are the general parameters on the authorized expenditures for the funds?

- i. The WIOA package has a limit of **\$13,000** per participant.
- ii. The overall limit on supportive services is **\$3,500** per participant, with a **\$2,000** threshold before higher level approval is needed.
- iii. Each supportive service has a spending guideline, which are referred to as thresholds and limits. The **threshold** is the amount the Workforce Specialist can spend on an active participant. The **limit** is a spending level at which the Workforce Specialists needs to obtain the Workforce Center Manager or his/her designee's approval before establishing an obligation that would exceed the designated threshold. For example:
 1. Under WIOA, supportive services are allowed and are designed to provide the participant with the resources necessary to enable their participation in career and training services. The participant must be engaged in a WIOA activity to receive supportive services. To determine the level of support required, the Workforce Specialist must:
 - a. Determine the need for support services with the completion of the Budget Worksheet;
 - b. Verify and document that all community resources have been tried;

- c. If applicable, gather price quotes to comparison shop and ensure the Department can document all expenditures are reasonable and necessary; and
- d. Document all information in Wyoming At Work, the Department's case management system, as a case note.

d. What are the eligibility requirements on the covered parties and duration of any payments?

- i. Please see above (2(i)-(iv)) for specific WIOA eligibility requirements. All services, including training services and employment activities, which includes supportive services, are only for the active WIOA participant. WIOA services do not cover or include any family members and/or dependents.
- ii. WIOA training costs are related to training services, including tuition, fees, books, supplies, tools, clothing, etc. which are required by the training program or are required for a course. WIOA training services have a maximum 2-year time limit.
- iii. Supportive services are designed to provide the participant with the resources necessary to enable participation in career and/or training services. The participant must be engaged in a WIOA activity (a training activity and/or a career service) to receive supportive services. Engagement for WIOA purposes is defined by remaining in contact with the Workforce Specialist at a minimum of every 60-days, and receiving services at least every 90-days.

3. As of a date certain, specific to claims arising from the Blackjewel bankruptcy, what are the total covered parties (miners, or miners and dependents)?

- i. In any Department of Labor program, only the participant that has been qualified for the program is eligible.

a. What are the total claims to date?

- i. Total claims filed for Unemployment Insurance as a result of the Blackjewel closure is 440. There are 17 claimants still receiving unemployment benefits.
- ii. For Labor Standards, a total of 32 employees filed claims for unpaid wages as a result of the Blackjewel closure, totaling \$126,030.67. However, the actual unpaid wages determined due was \$160,801.59. This discrepancy is due to employees under-estimating their hours worked or the value of employer contributions when filing their claims.
- iii. Nine dislocated workers from the Blackjewel closure were enrolled in WIOA.
- iv. Seven of these participants received the following services:
 - 1. 5 participants attended CDL training.

2. 1 participant enrolled in the Electrician Program at Gillette College.
 3. 1 participant enrolled in the Wyoming Real Estate Institute.
- v. All nine WIOA participants received support services. These support services included:
1. Clothing/boots
 2. Tools
 3. Mileage and lodging for training
 4. Rent
 5. Electricity Bill

b. What are the total payments to date?

- i. For Labor Standards, Blackjewel has provided proof of payment for unpaid wages totaling \$55,633.93, leaving an outstanding balance of \$108,153.74. Blackjewel attorneys assert that additional payments have been made but no official supporting documentation has been provided.
- ii. As of October 30, 2019, Blackjewel claimants have received:
 1. Unemployment Insurance benefits = \$1,076,676.00
 2. WIOA total expenditures = \$28,691.76 (Dislocated Workers = \$23,944.21 and POWER Grant = \$4,747.55)

c. What is the expectation for total payments throughout the resolution of the Blackjewel case?

- i. For Labor Standards, Blackjewel attorneys indicate there is currently no expectation for paying workers the value of their accrued, unused Paid Time Off.
- ii. The Department is still working with several of the Blackjewel WIOA participants and anticipates spending approximately \$10,000 to assist these individuals with their employment goals.

4. Is there any other quantitative or qualitative information that would be of benefit for policymakers?

- a. It is important to address that WIOA funding is only for participants who are seeking work or active in training. Cobra payments will cover the active participant only, and do not include dependents.

5. Does WFS have sufficient statutory investigative authority to pursue wage claims related to bankruptcy events?

- a. The Department does not currently have full statutory authority to pursue wage claims related to bankruptcy. For example, Labor Standards investigated the option of filing Proofs of Claim on behalf of the Blackjewel employees who filed unpaid wage claims with the State. The Bankruptcy Trustee informed the agency it has no statutory authority or legal standing to do so. As a result, aggrieved employees each had to file on their own behalf. Only two did so. Labor Standards would require statutory authority to stand in for the Claimant in cases of bankruptcy to have the ability to file in court on the Claimant's behalf.
- b. Labor Standards does not have the authority to perform class investigations. The Department must wait for each affected individual to file a wage claim. Labor Standards does not have the ability to initiate an investigation based upon a verbal, informal, or anonymous complaint.

6. Are there Wyoming statutory revisions that would improve WFS ability to assist in collective actions (or other efforts, e.g., provision of forms) on behalf of (or for) labor in bankruptcy cases or intervene in such cases?

- a. Anti-retaliation provisions – Wyo. Stat. Ann. § 27-4-502
 - i. There are currently no retaliation protections for those seeking redress under Wyoming's wage and hour statutes. Legislation could provide remedies for violations of wage and hour statutes, and protect witnesses from retaliation for participating in investigations. There are currently no anti-retaliation provisions for employees who file a charge of discrimination under the Wyoming Fair Employment Practices Act.
- b. Mandatory pay periods and clear penalties for violations.
 - i. Currently, only employees working in a few industries (*see* Wyo. Stat. Ann. § 27-4-101(a)) must be paid on a set schedule. This means most employees can be paid according to an employer's fluctuating schedule and have no recourse to recover wages until they separate from employment. Currently, there is no legislation to ensure employers pay workers on a reasonable schedule and, should the employer fail to do so, allow Labor Standards to intervene to collect wages without requiring termination of employment.
- c. Clarification in court jurisdiction.
 - i. District and Circuit Courts have struggled with which court has jurisdiction over Orders entered by Labor Standards regarding a wage claim, and being submitted for enforcement. Consequently, there have been examples where each court has found that it did not have jurisdiction, leaving the claimant

without the ability to enforce a Labor Standards Order. Therefore, if an employer fails to obey a Labor Standards' Order to pay, there are no enforcement options. This jurisdictional matter is currently not clarified in statute.

d. Expansion of prosecution options.

i. The Wage and Hour statute, Wyo. Stat. Ann. § 27-4-505, currently allows only a County Attorney to pursue unpaid wage claims. This leaves Labor Standards without recourse when a County Attorney declares a conflict of interest in the matter, or otherwise refuses to act on the claim.

ii. Additional enforcement options.

1. Currently, Labor Standards cannot enjoin or otherwise shut down, liquidate, and dissolve a business that either frequently violates Wage and Hour laws, or who otherwise engages in egregious violations of the statutes. The Unemployment Insurance program within the Department of Workforce Services currently has powers to enjoin non-compliant employers. Labor Standards frequently encounters repeat offenders in the state that continue to engage in unlawful behavior, even when faced with wage claims or fair employment charges. Legislation would allow statutory authority to widen investigations to an entire employer's labor pool and not limit Labor Standards to solely researching the wages owed and/or to those who file formal complaints.

e. Enhanced penalties for frequent Wage and Hour violations.

i. The current penalty for violating the Wage and Hour statutes (Wyo. Stat. Ann. § 27-4-504(d)) is a misdemeanor, a \$500.00 fine, and 18% interest on the amount owed, or 18% interest and up to \$200.00 per day as a civil penalty if the County Attorney does not want to pursue the matter as a criminal issue. Currently, Labor Standards cannot levy such fines or penalties; instead, they must be levied by an administrative hearing officer or court only after an employer fails to comply with the agency's order. Enhancing the penalty for employers would bring more parity to the issue of wage theft.

f. Pay stub requirements and end tip pooling.

i. Many employers do not provide pay stubs so employees have no way to reconcile their pay with taxes, garnishments, etc. There is currently no penalty for not providing pay stubs.

- ii. Currently, when cash is split, Labor Standards has to rely on the employer's word on how much there was and who received what, making wage claims difficult for an employee to prove.
- g. Requirement of overtime wages.
 - i. There is currently no statutory authority in Wyoming to pay overtime wages to an employee working more than forty (40) hours in a work week.
- h. Labor Standards currently lacks statutory authority to subpoena documents and witnesses relevant to its wage-claim investigations. If an employer does not respond to Labor Standards' requests for supporting documentation to prove a claim for wages, there are no regulatory or enforcement remedies available to compel production.
- i. There are currently no requirements for employers to post bonds to pay for unpaid wages in case the business becomes insolvent, and letters of credit are no longer accepted in lieu of bonds or cash deposits.
- j. There is currently no legislation that requires small businesses, under 100 employees, to provide notice of business closures, layoffs and lockouts – similar to the Worker Adjustment and Retraining Notification (WARN) Act.
- k. There are currently no rules that require businesses registered with the Secretary of State to identify ownership of all businesses and maintain up-to-date contact information, including phone numbers and email addresses, in addition to the physical and mailing addresses.
- l. The Department currently has no legal authority to publish, post, or disclose a list of employers who have several violations with Labor Standards. Currently, those businesses are allowed or entitled to benefits associated with working with other agencies within the Department of Workforce Services, such as workers' compensation premium/experience modification rate discounts, safety improvement fund grants, apprenticeship grants, workforce training grants, employment, and training grants, etc.