

WORKERS' COMPENSATION FRAUD

Labor-Management Advisory Council on Workers' Compensation
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PROCEDURES

- Internal investigation by State Fund Investigation Unit (SIU) and private investigators
- Referral by SIU to Division of Criminal Investigation (DCI) for law enforcement investigation
 - Close file after consultation with Assistant Attorney General
- Referral by DCI to Attorney General's Office (AG) for decision on prosecution
 - Decline to prosecute
 - File charges
 - Deferred prosecution agreement

STATISTICS

- January 2007 – August 2010
 - Theft by Injured Workers
 - \$140,143 in reported theft
 - 19 workers charged
 - 16 pled
 - \$103,377 in restitution
 - \$250 in fines
 - 1 deferred prosecution agreement
 - \$15,911 in restitution
 - 1 trial -- Not Guilty jury verdict
 - 1 pending
 - \$20,855 in theft

STATISTICS

- January 2007 – August 2010
 - Theft by Employers
 - \$175,900 in reported theft
 - 4 employers charged
 - 3 pled
 - \$41,835 in restitution ordered
 - 1 deferred prosecution agreement
 - \$20,000 in restitution

STATISTICS

- January 2007 – August 2010
 - 2 cases charged no conviction
 - 1 dismissed in interest of justice – rent only compensation – not “wages”
 - 1 trial resulted in not guilty verdict

STATISTICS

- January 2007 – August 2010
 - 5 cases referred to DCI but declined prosecution
 - 2 no probable cause to file charges
 - 2 minimal probable cause with no likelihood of conviction
 - 1 no sustainable legal argument regarding wages

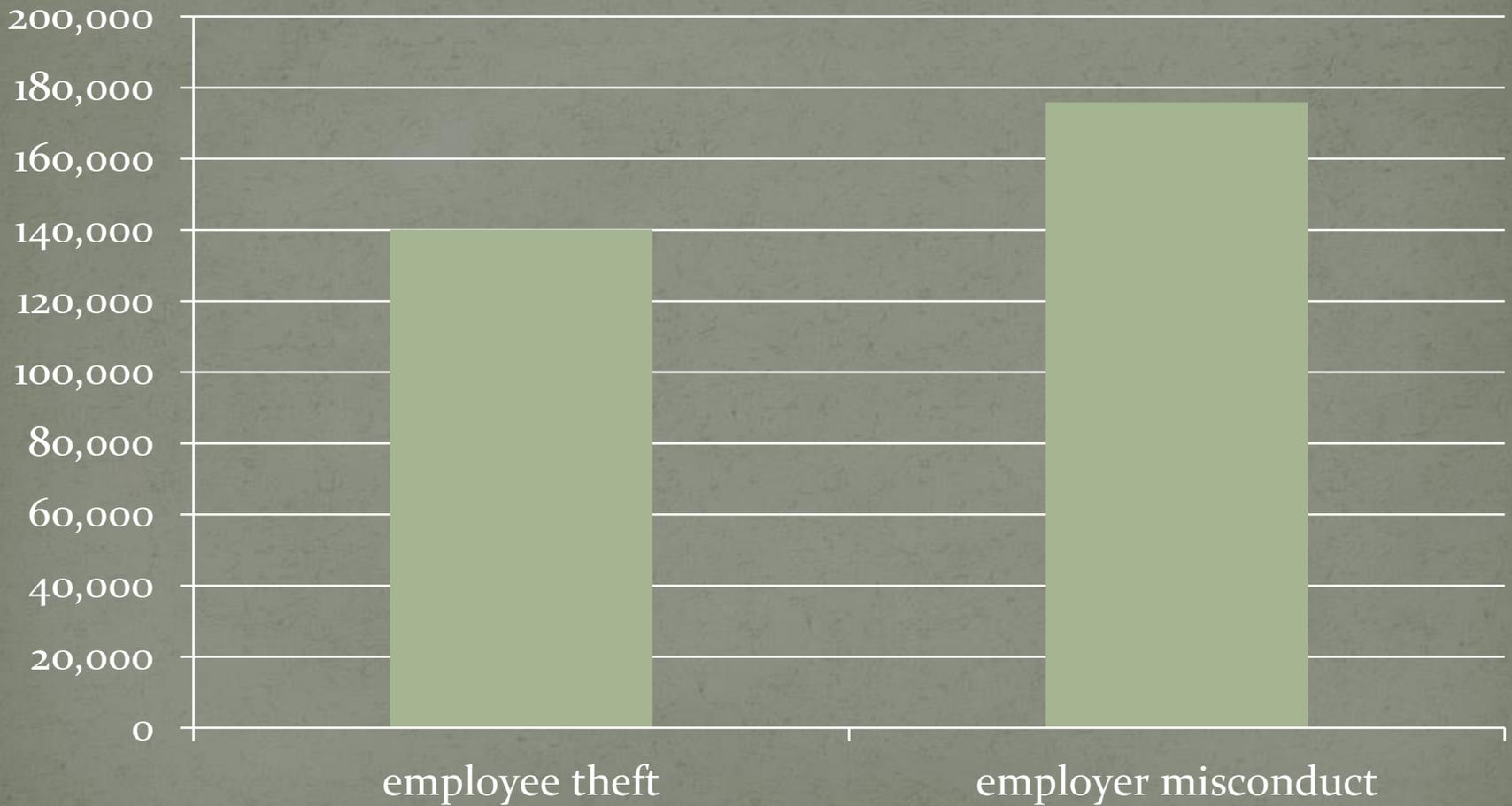
STATISTICS

- January 2007 – August 2010
 - 6 cases referred to DCI closed without referral for prosecution

NUMBER OF CASES



FRAUD AMOUNTS



STATUTES

- 45-6-301 -- THEFT
- (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:
 - (a) a knowingly false statement, representation, or impersonation; or
 - (b) deception or other fraudulent action.

STATUTES

- 45-7-501 -- EMPLOYER MISCONDUCT
- (1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if the person knowingly or purposely:
 - (a) avoids the person's responsibility to provide coverage for the person's employees as required by 39-71-401;
 - (b) misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of the person's employees; or
 - (c) refuses to pay premiums that the person is obligated to pay under compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, chapter 71, part 23.

CONSIDERATIONS REGARDING DECISIONS TO PROSECUTE

- PROBABLE CAUSE
 - Probability of criminal conduct to a reasonable and prudent person
- RESOURCE ALLOCATION LIMITATIONS
 - Misdemeanor/felony
 - Experts
 - Additional and/or expensive investigation resources
 - Location of witnesses/defendant
- LIKELIHOOD OF CONVICTION
 - Strength of evidence
 - Character, honesty, and believability of witnesses
 - Character, honesty, and believability of defendant
 - Legal issues (motions to dismiss/suppress)
 - Jury appeal of facts