



CalChamber Tags Job Killer; Author Cancels Bill Hearing

Sob Killers

Six days after the California Chamber of Commerce identified the job killer provisions of a workplace technology bill, the author pulled the

proposal from the hearing agenda for the Assembly policy committee that was to consider it next.

The bill, **AB 1651 (Kalra; D-San Jose)**, imposes overbroad, unworkable mandates on employers of all sizes, including public entities and tribal communities, that would reduce worker privacy, chill the development of new technologies, and wipe out small businesses for even a good faith mistake due to its excessively punitive enforcement mechanisms. Given the April 29 deadline for legislative policy committees to send bills along for consideration by fiscal committees, AB 1651 will not advance this year.

In an opposition letter submitted to legislators on April 25, the CalChamber explained the numerous problems contained within this bill. Below are some of the issues the letter discusses. To read the letter in full, click here.

Counterproductive to Ensuring Worker Privacy, Safety

AB 1651, also known as the Workplace Technology Accountability Act, imposes untenable mandates on employers that will ultimately reduce employee privacy. Proposed Section See CalChamber Tags: Page 4

In-Person Capitol Summit/Host Events to Return



The California Chamber of Commerce Capitol Summit returns as an in-person

event in Sacramento on June 1 with an information-packed agenda, including a look at election year politics and top policy issues.

Straight Talk

CalChamber President and CEO Jennifer Barrera will open the program with a straight talk drawing on her years overseeing the development and implementation of CalChamber policy and strategy.

Barrera is known for her success rate with the CalChamber's annual list of job killer legislation, efforts to reform the Private Attorneys General Act (PAGA) and leadership working with employers on critical issues, including most recently those arising from the COVID-19 pandemic.

Elections

Next will come two sessions focused on elections:

• Election Year Voter Attitudes, presented by pollster Adam Rosenblatt, Core Decision Analytics.

• Primary Preview: Pundits Talk June/November Elections. CalChamber Executive Vice President, Public Affairs Martin R. Wilson will moderate the discussion by longtime consultants Andrew Acosta, Acosta Consulting; Rob Stutzman, Stutzman Public Affairs; and Christy Wilson, Wilson Public Affairs.

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CalChamber CFO Larry Dicke Set to Retire at End of the Month



Over the last 20 years at the California Chamber of Commerce, chief financial officer Larry Dicke has kept the staff smiling and laughing throughout the workdays. His mantra

of "cash is king"

and echoes of him asking employees how they are doing can be heard throughout the office. Dicke has been a part of the CalChamber team since 2002, first serving as the CalChamber's vice president of finance before becoming executive vice president of finance and chief financial officer in 2007. In 2012, Dicke was also chosen to lead the CalChamber's membership and employment compliance business.

As Dicke retires at the end of the month, the CalChamber reflects on the ever-present figure and how he has kept the organization on a fiscally stable path while remaining in the background of office operations for the last two decades.

"Larry Dicke has guarded our financial well-being through some challenging times. We will always be grateful for his sound guidance," said CalChamber President and CEO Jennifer Barrera.

Over the years, Dicke has helped oversee several expansions and upgrades of CalChamber's websites, including *HRCalifornia.com*, which provides *See CalChamber CFO: Page 7*

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Labor Law Corner Review Expense Reimbursement Policies for Relevance to Remote Work



Sharon Novak HR Adviser

When the pandemic started, we sent many of our employees home to work remotely. Should we have a policy regarding reimbursement of their expenses?

The unexpected and rapid growth of remote workers since 2020 has changed the workplace permanently. Amid the chaos, employers needed to think about increased use of home internet, more personal cell phone usage, home office enhancements, and other expenditures necessary to work from home successfully. Remote work is not going away.

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Labor Code

Under California Labor Code Section 2802, employees are entitled to be reimbursed by their employers "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Section 2802 is interpreted and applied broadly to prevent employers from passing on business costs to employees.

Work from home expenses can be challenging to measure and apportion. Nevertheless, employers must monitor the expenses incurred by employees. By law, employers must ensure that all expenses "necessary" to perform the job remotely are reimbursed.

Employees working from home may see their utilities bills rise because they are using more electricity and need to adjust their climate control systems to be comfortable. A remote employee might have their own print/scan/copy machine that is being used significantly more because of the remote work.

Court Decisions

California courts have interpreted "necessary expenses" to include a reasonable percentage of an employee's monthly internet bill for work-related uses, even when the cost of the employee's internet plan is fixed.

In Cochran v. Schwan's Home Service, Inc. (228 Cal. App. 4th 1137 (2014)), a California court of appeal ruled that an employer must reimburse an employee if the employee is required to use a personal cell phone to make work-related calls, even when the employee did not incur an extra expense because they had an unlimited data plan.

The court in *Stuart v. RadioShack Corporation* (641 F.Supp.2d 901 (N.D. Cal. 2009)) ruled that employers cannot wait for an employee to submit a formal reimbursement request. "Once an employer knows or has reason to know that the employee has incurred an expense, then it has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is reimbursed for the expense."

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CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events. Labor and Employment

- Managing CFRA Leave as a Large Employer: Intensive Webinar. CalChamber. May 19–20, Online. (800) 331-8877.
- HR Boot Camp Virtual Seminar. CalChamber. May 5–6 SOLD OUT, May 26–27, June 23–24, Online. (800) 331-8877.
- Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. June 9–10, August 25–26, Online. (800) 331-8877.
- Managing CFRA Leave Requests at Your Small Business: Intensive Webinar. CalChamber. June 16–17, Online. (800) 331-8877.

Business Resources

Resilient Workplace Webinar. DRB Toolkit, California Office of Emergency Services (CalOES), Federal Emergency Management Agency (FEMA). May 10, May 25, Online. (877) 563-5628. International Trade

2022 Taiwan Trade Shows. Taiwan

External Trade Development Council. Through October 30, Online and In-Person. +886-2-2725-5200.

- Export Essentials: An MWOB (Minority & Women Owned Business) Symposium. Export-Import Bank of the United States. May 2, Los Angeles. (800) 872-8783.
- 13th Annual Mexico Advocacy Day Luncheon. CalChamber and Consulate General of Mexico, Sacramento. May 3, Sacramento. (916) 930-1233.
- 2022 World Trade Week Southern California: Global Trade: Reconnecting the World. Los Angeles Area Chamber of Commerce. May 5, Los Angeles. (213) 580-7569.
- Trade Mission to South America. U.S. Department of Commerce, International Trade Administration. May 15–20. (800) 872-8723.
- Annual Export Conference. National Association of District Export Councils. May 19–20, Washington D.C.



The Workplace Two Approaches to Worker Scheduling



In Episode 149 of The Workplace podcast, CalChamber employment law expert Matthew Roberts and CalChamber

policy advocate Ashley Hoffman discuss **AB 2932 (Low; D-Campbell)**, a proposal that would impose overtime requirements after 32 hours, and **AB 1761 (Voepel; R-Santee)**, a proposal that would allow for an employee-selected flexible work schedule.

Recent polling conducted by the CalChamber shows there's an overwhelming desire to allow for a mutual workplace flexibility agreement, Roberts says in kicking off the podcast. Polling shows that 88% of respondents support changing overtime rules to allow for individual alternative workweek schedules, a situation where an employee and an employer can come together and design a workweek that works for them.

Another 82% of respondents supported allowing employees to take their rest periods whenever they want, and 80% supported allowing employees to forgo meal periods if the employer chooses to allow them to go home earlier.

This, however, doesn't jive very well with California's rest and meal break rules, Roberts says. And unfortunately, California legislators are proposing a bill that will create more costs for employers.

4-Day Workweek Proposal

AB 2932 is a CalChamber job killer bill that will change the 40-hour overtime requirement to 32 hours, Hoffman explains. So if an employer has a classic 9 to 5 employee, this bill would require the employer to pay overtime (for the entire day) if the employee works on Friday (the fifth day). On top of this, the bill contains a provision stating that the employer would have to keep the employee's compensation the same.

Many employment attorneys are interpreting this to mean that employers will have to pay employees at 32 hours the same amount that they would normally earn at 40 hours. So for example, Hoffman says, if a worker makes \$20 an hour, they make about \$800 after 40 hours of work. Under AB 2932, this same worker would now be owed that \$800 after 32 hours. What this means is that employers would have to increase the hourly rate.

Under this example, the worker's hourly rate increases to \$25 an hour. And then if the employer needs the worker to come in a fifth day for overtime, that hourly rate becomes \$37.50 an hour, which is an 87.5% increase.

Aside from the economic impacts of this proposal, AB 2932 puts employers in a really tough position of deciding whether to pay out the extra overtime or hire more workers to ensure no one is working more than 32 hours. Hoffman points out that many employers have reached out to express just how bad the labor shortage is right now. Many employers cannot get people to apply for a position, and even when someone has been hired, there are many stories of how about half of new hires don't even show up.

"It's a very difficult time to hire. And so, this alternative of having other people on staff to cover after 32 hours is just really not an option for a lot of people," Hoffman tells Roberts.

An economic analysis done by Encina Advisors, LLC showed that between 340,000 to 1 million jobs would be lost if this proposal were to become law.

The cost of goods and services would also increase. Child care costs, for example, would increase dramatically because staffing costs would rise and the number of slots a daycare center has available would decrease. And the increased cost of goods is really going to have a tremendous impact, affecting both employers and workers, she says.

Hoffman explains that in order for AB 2932 to continue moving through the Legislature, it must pass out of the Assembly fiscal committee by April 29.

The bill, however, was not voted on at the Assembly Labor and Employment Committee hearing on April 20, so at this point, the bill will likely not come up for a vote and will miss the April 29 deadline.

Still, Roberts points out that when something is proposed in the Legislature and fails to pass, it doesn't mean that it won't come back up again in the future. See Two Approaches: Page 5



CalChamber Member Feedback

"CalChamber's strategic thinking and its commonsense advocacy and policy solutions to our biggest business growth and job creation issues in the private sector make CalChamber a critical partner for our organization."

Kailesh Karavadra Partner Ernst & Young LLP



CalChamber Tags Job Killer; Author Cancels Bill Hearing

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1533 provides that an employer may not "collect, store, analyze, or interpret worker data" unless it is "strictly necessary" to accomplish at least one of seven allowable reasons.

One of the many problems with this section is that it could require employers to engage in overly invasive reviews of every single document or communication produced by an employee to determine if it falls under one of the seven allowable categories, the CalChamber points out.

Under this bill, if an employee uses their work email to send a personal email, the bill seems to require the employer to actively read those emails. The employer could then be required to delete that email because it would not qualify under one of the specified categories. Having that email saved through Outlook or another email system to their server or even locally to a work-issued computer could be a violation of this proposed law. Specifically, each violation of Section 1533 would be subject to a \$20,000 fine.

Moreover, the requirement to delete any data that does not fall under one of the specified categories raises significant concerns regarding preservation of evidence. This measure could frustrate an employer's efforts to rid the workplace of sexual harassers.

An inappropriate email or text message that would help prove a harassment victim's case may be required to be deleted under this requirement. Emails, calendar appointments, or other documents that could help support a worker's claim for unpaid wages could be deleted. This section, the CalChamber warns, has unintended consequences that will hurt workers.

Chills Use of Electronics to Help Manage Employees

Proposed Section 1543 prohibits electronic monitoring unless it is "strictly necessary" to accomplish the purpose at issue and is the "least invasive means" that could reasonably be used. The CalChamber points out that this requirement sets such a high standard that it could effectively chill the use of any monitoring. Devices used to track where a delivery driver is or where a technician on a house call is, are generally agreed to be beneficial to all involved: customers know when to expect these services, companies can monitor drivers for purposes of scheduling, and it enhances safety for the driver in case they need roadside assistance or an unexpected event occurs while completing their duties.

Recording customer service calls ensures quality control as well as assists other customer service representatives who help a customer because they can review prior interactions with that customer. Yet, with such a high bar, these devices could inevitably be challenged in court as to whether that is "strictly necessary" or the "least invasive means," the CalChamber states.

As a matter of public policy, many would agree that some of these monitoring functions may not be strictly necessary, but the benefit they provide to customers, the worker, and the employer make them preferable and acceptable practices.

Further, the breadth of the definition would include standard cybersecurity tools that companies use to prevent breaches and data loss (which they would be required to do under this bill), protect their own confidential data, as well as personal data of employees and customers.

Even if this technology falls under the "allowable purposes," it would first be subject to approval by the labor agency, which has absolutely no expertise in this issue area and will likely take months or years to approve these systems given that every company in California must submit them for approval, the CalChamber points out.

Unintended Consequences, Including Less Safe Workplaces

Lastly, the CalChamber warns that AB 1651's restrictions on the use of elec-

tronic monitoring for employment-related decisions are overly prescriptive and may lead to bizarre public policy outcomes.

AB 1651 prohibits an employer from making any hiring, promotion, termination, or disciplinary decisions based solely on electronic monitoring. It requires "independent corroboration" — an undefined term — for any such decision.

Under this language, the CalChamber says, an employer could be prohibited from:

1. Disciplining an employee based on conduct caught on a security camera, including criminal activity.

2. Disciplining an employee for inappropriate content contained in an email.

3. Promoting a worker who is consistently meeting productivity goals as tracked by a software program.

4. Disciplining an employee based on a recorded call with a customer.

5. Disciplining a remote worker who is failing to timely take meal or rest periods (many employers are forced to have such policies because of the rampant shakedown Private Attorneys General Act (PAGA) lawsuits alleging meal and rest break violations).

6. Enforcing policies against working off-the-clock.

7. Disciplining a worker who is speeding in a school zone or consistently deviating from their delivery route.

Employers need to be able to rely on monitoring to some degree for employment-related decisions, the CalChamber states in its letter.

"Otherwise, this will result in bizarre public policy outcomes like not being able to discipline a worker for an inappropriate email or requiring supervisors to completely micro-manage workers because they must be able to independently corroborate every single thing that a worker does."

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In-Person Capitol Summit/Host Events to Return on June 1-2

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Policy Issues

Delving into the hottest policy issues will be CalChamber Executive Vice President and Chief of Staff for Policy Ben Golombek; Policy Advocate Ashley Hoffman, who specializes in labor and employment and workers' compensation issues; and Senior Policy Advocate Adam Regele, who specializes in environmental policy, housing and land use, and product regulation issues.

Moderating the discussion will be former Assemblymember Autumn Burke, now principal at Axiom Advisors.

Other Events

After the Summit, attendees have the option to stop by the CalChamber

International Forum (a separate RSVP is required).

The afternoon forum will focus on trade issues for the California trade/business community, including the consular corps. Featured speakers will include California Lieutenant Governor Eleni Kounalakis, and members of the international team at the Governor's Office of Business and Economic Development (GO-Biz).

Scheduled for the evening of June 1 is the Sacramento Host Reception. This event is co-sponsored by the CalChamber and the Sacramento Host Committee to provide networking opportunities for business leaders from industries throughout the state.

The reception also gives attendees the opportunity to discuss key issues facing

the state with other business leaders and elected officials. The evening event is a prelude to the 96th Annual Host Breakfast the next morning, June 2.

Featured speakers at the breakfast traditionally have been the Governor of California and the chair of the CalChamber Board of Directors.

Registration

The fee to register for the Capitol Summit is \$100 per person. Once registered, registrants have the option to RSVP for the International Forum, the Host Reception, and Host Breakfast at no additional cost. The deadline to register is Friday, May 20 or until sold out. Space is limited.

For more information or to register, visit this link.

Review Expense Reimbursement Policies for Relevance to Remote Work

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Lawsuits

Failure of companies to recognize that remote employees are paying out of their own pockets while working remotely already has led to serious consequences for employers.

A significant number of class action and Private Attorneys General Act (PAGA) lawsuits have already been filed seeking expense reimbursements, penalties, and even attorney fees, and more are sure to be on the horizon.

The lawsuits include usual claims such as a failure to reimburse telephone and internet expenses and the cost of other office supplies. Some lawsuits, however, also include more novel claims for expenses such as utilities costs to heat or cool a house and even lost revenue for employees who say they could have rented out the space in their home instead of using it as a home office.

The pandemic and subsequent remote work happened so suddenly that many employers had no policies in place regarding expenses associated with working from home, which is driving much of this litigation.

Employers need to determine what expenses are being shouldered by remote workers and whether they are being reimbursed. Creating and implementing a reimbursement policy for remote work expenses also may be appropriate.

Employers should review their current reimbursement policies in consultation

with legal counsel to make sure that all reimbursement obligations are being met.

Online Tool

The *California Employee Handbook Creator Online Tool* offers sample policies for subscribers. Each sample policy allows the user to choose from options to create the subscriber's custom employee handbook. More information is available at the CalChamber Store.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www. hrcalifornia.com.

Two Approaches to Worker Scheduling

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Flexible Workweek Proposal

One of the most inflexible parts of California's wage and hour laws is the actual creation of an alternative workweek, Roberts says. There is a provision that allows employers to create an alternative workweek schedule, as long as the schedule still remains 40 hours or shorter, but it requires a lot of bureaucratic processes. And it's not really designed to be a one off where you can do it with individual employees.

AB 1761 is a CalChamber-supported bill that would allow employees to decide one-on-one to have an alternative workweek schedule and to enter into such an agreement with their employer instead of having to go through the typical process that requires the entire work unit to also be on board with the alternative workweek. Hoffman says she's heard from many employers who wish they could implement this. Many employers have workers who, because of child care and other responsibilities, want to enter into alternative workweek agreements. Unfortunately, the bill faces opposition from certain groups, and a similar bill last year didn't even get set for a hearing.



Need for Better Data Still Consensus as Maritime Data Initiative Meetings End



The need for real-time data within the supply chain remained in the spotlight as the Federal

Maritime Commission (FMC) Maritime Data Initiative meetings concluded in April.

Access to good, real-time data is crucial to prevent inefficiencies through every step of the supply chain, allowing for possible bottlenecks to be predicted and prevented when data is being used to its highest potential.

The goal of the FMC initiative is to establish data standards and best practices for data access and transmission, which is essential not only for reliable and stable ocean transportation systems, but for the global supply chain.

The weekly meetings ran from December through April and examined global supply chain issues from the perspectives of different groups of stakeholders.

Comments from the April data initiative meetings are summarized below.

Consequences of Data Quality

The April 5 meeting featured marine terminal operators (MTOs), who discussed how having better access to data would improve overall efficiency in their yards by enabling them to plan yard space, worker hours, and equipment needed in advance. MTOs could better stage cargo in their yards if they had access to better data, thus improving overall supply chain efficiency by allowing for an increase in service to truckers and ocean carriers as well.

The MTOs also discussed issues with receiving too much data, sanitized data, and lagging data — all of which create their own set of inefficiencies:

• Too much data means that it constantly needs to be sorted through and someone must find and pull out what is useful. A lot of data also requires a huge amount of bandwidth.

• With sanitized data, it is hard to get the level of detail needed to glean the necessary information to be adequately prepared. • Lagging data often is not useful at all because it is old or already out of date.

Stakeholders discussed the hope that the supply chain would ideally move to a service infrastructure model and utilize data warehouses so supply chain stakeholders can pull into their systems only the information that is needed.

One stakeholder suggested the mining of data for manifests to better inform staffing strategies in marine terminals and improve import flow. He noted, however, that this would require more complex data management and likely more advanced systems. Their goal is to reduce the rehandling or unnecessary shuffling of cargo.

He quipped that the marine terminal is not like a "buffet at the Bellagio"; there is only so much real estate for cargo, and they need to optimize assets and move quickly.

Uses for Standardized Data

The last two meetings on April 12 and April 19 both highlighted the role of carriers in the supply chain. Stakeholders discussed the need for creating a standard that would span across industries, as the lack of a standard is creating inefficiencies, information gaps and a need for some data to be input manually. Standardized data would enable stakeholders to leverage the information, help with fluidity and create a more seamless system for transport and visibility.

The speakers emphasized the need for real-time data because it allows stakeholders to act in real time and choose next best alternatives if they see the potential for a bottleneck in the system. These types of preventative measures can occur only if the data is being captured in real time.

Having the ability to access real-time data also is important for putting the power into the hands of the customer, whomever that may be, in each step of the supply chain. At the end of the day, customers want to know exactly where their cargo is, and currently, being able to collect and share that information often is a complicated process.

One speaker observed that because of the nature of the global supply chain,

no one has the ability to just stop what they're doing and replace the technology that is being used and then start the supply chain up again. Integration has to take place while performing, and on top of that, it has to take place while increasing that performance year over year.

The speaker remarked that replacing systems which have been in place for decades is not an easy task to undertake.

Commissioner Rebecca Dye

Commissioner Rebecca Dye spoke briefly at the last meeting, noting that visibility is the most important element needed for the ocean supply chain. Commissioner Dye said that no one in the world has been able to harmonize the supply chain, as you would need to tell every significant supply chain actor what they need to know exactly when they need to know it, but that no one supply chain actor can fix the problems alone; a mutual commitment within the supply chain is needed.

Final In-Person Summit

Federal Maritime Commissioner Carl Bentzel has led meetings with maritime and intermodal stakeholders from December 2021 to April 2022. Initial findings from these meetings will be presented at the FMC Maritime Transportation Summit, currently scheduled for June 1.

All meetings are open to the public and the FMC has made available a new email address where stakeholders can communicate any concerns related to the topic of maritime data at *maritimedata*(*a*) *finc.gov*.

To see the dates and topics of the past initiative meetings, plus links for online viewing, visit the FMC Maritime Transportation Data Initiative website at *www.fmc.gov*.

CalChamber coverage of previous meetings is available here.

Information compiled by Nicole Ellis, CalChamber international affairs and media relations specialist. Staff Contact: Susanne T. Stirling



CalChamber CFO Larry Dicke Set to Retire at End of the Month

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employment law information to members and customers.

He has attended numerous international luncheons and breakfasts, and was among the CalChamber representatives on a trade mission to Mexico City in 2014 that was led by Governor Edmund G. Brown Jr.

Dicke was also on the business delegations that accompanied Governor Arnold Schwarzenegger on his trade missions to China (2005), Mexico (2006) and Canada (2007).

While managing CalChamber finances, Dicke has made sure not only that the business side ran efficiently, but that everyone on staff was happy and being taken care of as well. Rob Vargas, CalChamber director of finance, noted Dicke's softer side, as he has been known to often help employees who needed a hand in their personal life, specifically employees with medical challenges or sick loved ones.

Dicke was born and raised in Chicago, graduating from Millikin University in Decatur, Illinois with a B.S. in accounting. He passed the CPA exam in Illinois and earned his M.B.A. from the University of Chicago.

Before coming to the CalChamber,

Dicke worked for Blue Diamond Growers in Sacramento as vice president of finance and chief financial officer for almost a decade. Prior to moving to California, Dicke worked for the Brach Candy Company in Chicago, serving as vice president of finance and administration. Dicke also previously worked for Jacobs Suchard, a coffee and candy company with corporate offices in Switzerland, holding senior-level positions in marketing, purchasing and operations, and running a business unit.

In 2014, Dicke was named CFO of the Year for nonprofits in the Sacramento area by the *Sacramento Business Journal*. Dicke received the award, in part, for leading the CalChamber through the recession without massive layoffs. While other organizations saw revenues plunge, the CalChamber's revenue stayed roughly between \$20 million and \$22 million between 2008 and 2013.

But Dicke, who has been known around the CalChamber for his low-key demeanor, wouldn't take credit; instead, he praised his staff for the organization's financial stability during the economic downturn.

Besides serving the CalChamber, Dicke sat on the board of the Sacramento Area Commerce and Trade Organization for eight years, also serving as president; taught as an adjunct professor of finance for five years at the Graduate School of Management at the University of California, Davis; was one of 10 financial executives in the region who helped form the Sacramento Chapter of Financial Executives International in 2006; served as chief financial officer for the California State Protocol Foundation: was a member of the California Governor and First Lady's Conference Board of Directors; served on the board of the Women's Alzheimer's Movement: and once served on the board of the Sacramento Metropolitan Chamber of Commerce.

He is a member of the National Association of Corporate Directors, the American Institute of Certified Public Accountants and the Institute of Management Accountants.

Upon being recognized as the Sacramento CFO of the year in 2014, Dicke was quoted as saying, "I don't want to stand on what I did in the past. I'm always looking forward."

We here at the CalChamber hope that is still true today and that Dicke looks forward to what is to come as he enters this next chapter of his life.

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