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## actions speak louder than words

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*MSK Client Alert*

April 18, 2019

### **Employee Must Arbitrate Employment Dispute Once Employer Declares that Continued Employment Manifests Assent to Arbitration Policy**

Late last week, the California Court of Appeals ruled in *Diaz v. Sohnen Enterprises* that an employee must arbitrate her discrimination suit against her employer because she consented to an arbitration agreement by continuing to work. The split, three-judge panel sent the employee's claims to arbitration even though she never signed the written arbitration agreement and verbally rejected it.

In short, the Court held that "California law in this area is settled: when an employee continues his or her employment after notification that an agreement to arbitration is a condition of continued employment, that employee has impliedly consented to the arbitration agreement."

This case is a win for employers who have mandatory arbitration agreements. It also raises the question of whether the Court's reasoning might apply in a traditional labor negotiation context where the employer and the union are at an impasse over the employer's proposal to expand existing arbitration provisions in a collective bargaining agreement to cover statutory claims, and the employer thereafter implements the proposal.

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