California Court Says At-Will Employees May Be Able to Sue for Breach of Implied Covenant of Good Faith and Fair Dealing
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A California appellate court recently held that an employer may be liable for breach of the covenant of good faith and fair dealing for terminating the employment of an employee at will. *Eysie v. Zacson Corporation*, First Appellate District, A086189. While California courts have generally held that an at-will employee cannot claim that his or her termination breached the implied covenant of good faith and fair dealing (which implies a promise that neither party will do anything to injure the other’s right to receive the benefits of the agreement), *Eysie* suggests that an employee may have an enforceable right under California law to receive other benefits of the bargain, even where the employer has the unrestricted right to terminate without good cause.

Plaintiff Daniel Eysie relocated his family from San Diego to Atlanta in reliance on the terms of his employment agreement with defendant Zacson Corporation. Eysie, a commission salesperson, alleged that after he arrived in Atlanta, Zacson modified his compensation formula to his disadvantage and employed restrictive methods to prevent him from earning commissions. According to Eysie, Zacson ultimately fired him to avoid payment of commissions due him. Eysie alleged that following his discharge, he was not paid commissions for accounts he had "secured," and he claimed that he was in the process of securing lucrative long-term business with two major clients when he was discharged. Finally, Eysie alleged that, shortly after Zacson learned that he was on the brink of bringing in business with a potential value of $60 million, he was fired in order to deprive him of substantial commissions to which he would have been entitled had he still been employed when the deal closed.

Eysie sued Zacson alleging, *inter alia*, that Zacson had violated the covenant of good faith and fair dealing by terminating his employment for the sole purpose of preventing him from collecting sales commissions. The trial court dismissed on summary judgment Eysie’s claim of breach of the covenant of good faith and fair dealing, apparently agreeing with Zacson that the claim was barred because Eysie was an employee at will, terminable at any time for any reason. The trial court also adopted Zacson’s view that it had paid Eysie all the commissions to which he was entitled under the *express* terms of the agreement.

Reversing the trial court's decision, the appellate court held that Zacson had failed to establish that it possessed the contractual power to discharge Eysie without cause. More significantly, however, the Court held that even if Zacson *did* have the unfettered right to terminate Eysie's employment without cause, it could still be liable for breach of the covenant of good faith and fair dealing. The Court found that "an employer may be subject to liability [for breach of the covenant of good faith and fair dealing], despite complying with the literal terms of the employment contract, if it
uses a power of termination not merely to sever the employment relationship in good faith but to deprive the employee of commissions earned and otherwise payable under the agreement."

The ramifications of the *Eysie* decision are uncertain, especially since the opinion has not been certified for publication and therefore may not be cited as precedent in other cases. However, a California attorney recently petitioned the California Supreme Court to have the *Eysie* opinion published. This attorney, whose clients include discharged Silicon Valley internet company employees, plans to use *Eysie* to win back his clients’ rights to exercise stock options that had not fully vested at the time of their discharge.

*Eysie* may signal a new trend among California courts to more actively protect the rights of employees who are promised deferred compensation in the form of sales commissions, stock options, and the like. Thus, employers are well advised to consult counsel prior to discharging employees who are on the verge of accruing substantial compensation or benefits.