

On December 2, an employer called a job applicant who had interviewed and offered her a position paying \$65,000 per year. The employer told the applicant that she could accept the offer by showing up for work on January 2 and that the term of employment would be one year from when she started.

The applicant showed up for and began work on January 2. Two weeks later, the employer discharged her without cause. The applicant has sued for breach of contract.

Would the statute of frauds be an effective defense for the employer in that action?

- A. No, because the applicant's commencement of performance removed the statute of frauds as a defense.
- B. No, because the agreement could have been fully performed within a year from the time that it was made.
- C. Yes, because the agreement could not have been fully performed within a year from the time that the offer was communicated to the applicant.
- D. Yes, because the agreement was for \$65,000.

Correct

Collecting Statistics

02 mins, 43 secsTime Spent

2023Version

## Explanation:

### One-year provision of statute of frauds

<b>Applicability</b>	Contracts whose terms make it impossible for any party to fully perform within one year Excludes contracts of uncertain duration (eg, lifetime contracts)
<b>Effect of performance</b>	Part performance – does <i>not</i> remove contract from statute, but restitution available for reasonable value of performance rendered Full performance – removes contract from statute, whether or not performance is completed within a year
<b>Effect of option to terminate within a year*</b>	Majority rule – does <i>not</i> remove contract from statute, because termination is not performance Minority rule – removes contract from statute, because duration of contract is uncertain

\*Jurisdictions agree that where only the plaintiff has the option to terminate, the statute of frauds applies.

A **contract** falls within the one-year provision of the [statute of frauds](#)—and must therefore be **in writing** to be enforceable—if its terms make it **impossible** for any party to **fully perform within one year** of its making. This **one-year period starts the day after the contract is made**—ie, the day after the offer is accepted.

Here, the job applicant accepted the employer's oral job offer by showing up for work on the specified date. And since the term of her employment was one year from the date she started work, the employment agreement could have been fully performed within a year from the time that it was made. Therefore, the statute of frauds would not be an effective defense for the employer to raise in the applicant's breach-of-contract action.

**(Choice A)** A party's *full* performance of its obligations under an oral agreement removes the statute of frauds as a defense. However, the applicant's commencement of performance (ie, *partial* performance) does not remove the statute of frauds as a defense. Instead, the defense would be ineffective here because the agreement could have been fully performed within one year from the time the applicant accepted the employer's oral offer.

**(Choice C)** The one-year period for the statute of frauds starts the day after the offer is accepted—not after the offeror communicates the offer to the offeree.

**(Choice D)** Under the Uniform Commercial Code, contracts for the sale of *goods* for \$500 or more must be in writing to comply with the statute of frauds. However, there is no

corollary rule for contracts for *services* such as employment. Therefore, it is irrelevant that the employment agreement here was for \$65,000.

**Educational objective:**

The one-year provision of the statute of frauds applies to a contract whose terms make it impossible for any party to fully perform within one year. This one-year period starts the day after the contract is made—ie, the day after the offer is accepted.

**References**

Restatement (Second) of Contracts § 130 (Am. Law Inst. 1981) (setting forth the one-year provision of the statute of frauds).

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