A consulting firm orally agreed to employ an executive as its president for the executive's lifetime. The parties negotiated and have agreed to all aspects of the employment except for the executive's salary, on which they remain several thousand dollars apart. The executive has sent a signed letter to the firm confirming the terms to which the parties have orally agreed while acknowledging that the salary has yet to be set. The firm has not responded to the confirmation letter.

Do the parties now have an enforceable contract?

A. No, because an agreement for lifetime employment is subject to the statute of frauds, and the confirmation letter fails to satisfy the statute. (36%)

B. No, because the agreement is too indefinite to be enforced. (38%)

C. Yes, because the agreement is not subject to the statute of frauds, and the parties must negotiate the executive's salary in good faith. (16%)

D. Yes, because the confirmation letter satisfies the statute of frauds and evidences the parties' intent to be bound. (7%)

Incorrect

Correct answer B

38%Answered correctly

01 min, 20 secsTime Spent

2023Version

Explanation:

Essential contract terms*

Parties
Subject matter (eg, description of goods or services)
Price or other consideration
Quantity
Duration of contract
Time for each party's performance
*Necessarily varies by contract.

A contract to employ someone for an indefinite or permanent duration typically creates an at-will employment relationship that is governed by common law.* At common law, all **essential (ie, material) terms** must be covered in a contract for it to be valid and enforceable. And those terms must be sufficiently **certain and definite** for the court to determine the existence of a breach and give an appropriate remedy. Otherwise, the contract fails for indefiniteness. In an employment contract, the **employee's salary (ie, compensation)** is an **essential term**.

Here, the executive and the consulting firm negotiated and agreed to almost all aspects of the executive's lifetime employment with the firm. However, their agreement is too indefinite to be enforced because the parties did not agree on the essential term of the executive's salary. Therefore, the parties do not have an enforceable contract.

*An at-will employment relationship allows either party to terminate the employment contract at any time and for any reason unless the termination violates public policy—eg, when an employee is discharged for filing a discrimination claim.

(Choice A) The statute of frauds requires that any contract that cannot be performed within one year be in writing. However, an agreement for lifetime employment is not subject to the statute of frauds because it could be performed within a year if the employee retires or dies within one year.

(Choice C) Although the parties' lifetime employment agreement is not subject to the statute of frauds, the parties do not yet have an enforceable contract. That is because the parties must agree to the executive's salary (an essential term).

(Choice D) The employment agreement is not subject to the statute of frauds, so the confirmation letter is not necessary to enforce any contract yet to be formed. Additionally, the parties must still agree to the executive's salary to create an enforceable contract.

Educational objective:

At common law, all essential terms—eg, an employee's salary in an employment contract—must be covered in a contract and be sufficiently certain and definite for the contract to be valid and enforceable. Otherwise, the contract fails for indefiniteness.

References

17A Am. Jur. 2d Contracts § 191 (2022) (explaining that an employee's compensation is an essential term for contract formation).

17A Am. Jur. 2d Contracts § 180 (2022) (defining the requisites for definiteness and certainty of contract terms).