

WAGWORKS, INC.  
Form S-8  
May 16, 2013

As filed with the Securities and Exchange Commission on May 16, 2013

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**

*Under*

*The Securities Act of 1933*

**WageWorks, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**94-3351864**  
(I.R.S. Employer  
Identification Number)

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**1100 Park Place, 4th Floor**

**San Mateo, California 94403**

(Address of principal executive offices, including zip code)

**WageWorks, Inc. Amended and Restated 2010 Equity Incentive Plan**

**WageWorks, Inc. 2012 Employee Stock Purchase Plan**

(Full title of the plan)

**Kimberly L. Jackson, Esq.**

**Senior Vice President, General Counsel and Secretary**

**WageWorks, Inc.**

**1100 Park Place, 4th Floor**

**San Mateo, California 94403**

**(650) 577-5200**

(Name, address and telephone number, including area code, of agent for service)

*Copy to:*

**Mark B. Baudler, Esq.**

**Wilson Sonsini Goodrich & Rosati, P.C.**

**650 Page Mill Road**

**Palo Alto, California 94304**

**(650) 493-9300**

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (do not check if a smaller reporting company) Smaller reporting company

### CALCULATION OF REGISTRATION FEE

	Amount	Proposed Maximum Offering Price	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Title of Securities to be Registered	Registered (1)	Per Share	Offering Price	Registration Fee
Common stock, \$0.001 par value per share:				
To be issued under the Amended and Restated 2010 Equity Incentive Plan	1,947,144(2)	\$26.09(4)	\$50,800,986.96	\$6,929.25
To be issued under the 2012 Employee Stock Purchase Plan	315,714(3)	\$22.18(5)	\$7,002,536.52	\$955.15
<b>TOTAL:</b>	<b>2,262,858</b>		<b>\$57,803,523.48</b>	<b>\$7,884.40</b>

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's common stock that become issuable under the Amended and Restated 2010 Equity Incentive Plan ( 2010 Plan ) and 2012 Employee Stock Purchase Plan ( 2012 ESPP ) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) Reflects 1,000,000 additional shares reserved for issuance under the 2010 Plan on April 16, 2013 and an automatic increase to the number of shares reserved for issuance under the 2010 Plan on January 1, 2013, which annual increase is provided for in the 2010 Plan.
- (3) Reflects an automatic increase to the number of shares reserved for issuance under the 2012 ESPP on January 1, 2013, which annual increase is provided for in the 2012 ESPP.
- (4) Estimated in accordance with Rule 457(h) solely for purposes of calculating the registration fee on the basis of \$26.09, the average of the high and low prices of the Registrant's common stock as reported on the New York Stock Exchange on May 9, 2013.
- (5) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of 85% of \$26.09, the average of the high and low prices of the Registrant's common stock as reported on the New York Stock Exchange on May 9, 2013. Pursuant to the 2012 ESPP, which plan is incorporated by reference herein, the purchase price of the shares of common stock will be 85% of the lower of the fair market value of the common stock on the first trading day of the offering period or on the last day of the offering period.

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**REGISTRATION STATEMENT ON FORM S-8**

The contents of the Registration Statement on Form S-8 (No. 333-181300) filed by WageWorks, Inc. (the Registrant) with the Securities and Exchange Commission (the Commission) on May 10, 2012 are incorporated herein by reference.

**PART II**

**INFORMATION REQUIRED IN REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

- (1) The Registrant's Prospectus filed with the Commission on March 13, 2013, pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the Securities Act), relating to the Registration Statement on Form S-1, as amended (File No. 333-186980), which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed;
- (2) The Registrant's annual report on Form 10-K for the fiscal year ended December 31, 2012 filed with the Commission on February 27, 2013, as amended;
- (3) The Registrant's quarterly report on Form 10-Q for the quarter ended March 31, 2013 filed with the Commission on May 9, 2013;
- (3) The Registrant's current reports on Form 8-K filed with the Commission on January 7, 2013, March 1, 2013 and April 17, 2013; and
- (4) The description of the Registrant's Common Stock contained in the Company's Registration Statement on Form 8-A (File No. 001-35232) filed with the Commission on July 12, 2011, pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law authorizes a corporation's board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law, the registrant's certificate of incorporation to be in effect upon the closing of this offering includes provisions that eliminate the personal liability of its directors for monetary damages for breach of their fiduciary duty as directors. To the extent Section 102(b)(7) is interpreted, or the Delaware General Corporation Law is amended, to allow similar protections for officers of a corporation, such provisions of the registrant's certificate of incorporation shall also extend to those persons.

In addition, as permitted by Section 145 of the Delaware General Corporation Law, the bylaws of the Registrant to be effective upon completion of this offering provide that:

The Registrant shall indemnify its directors and officers for serving the registrant in those capacities or for serving other business enterprises at the registrant's request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.

The Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.

The Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.

The Registrant will not be obligated pursuant to the bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors or brought to enforce a right to indemnification.

The rights conferred in the bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons.

The Registrant may not retroactively amend the bylaw provisions to reduce its indemnification obligations to directors, officers, employees and agents.

The Registrant's policy is to enter into separate indemnification agreements with each of its directors and officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the Delaware General Corporation Law and also provides for certain additional procedural protections. The Registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

These indemnification provisions and the indemnification agreements entered into between the Registrant and its officers and directors may be sufficiently broad to permit indemnification of the Registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Exhibit Number	Description	Form	Incorporated by Reference		Filing Date
			File No.	Exhibit	
4.1	Specimen common stock certificate of Registrant	S-1	333-173709	4.1	7/19/2011
4.2	Amended and Restated 2010 Equity Incentive Plan	8-K	001-35232	8-K	4/17/2013
4.3	Amended Form of Stock Option Agreement under the Amended and Restated 2010 Equity Incentive Plan	10-K	001-35232	10.29	2/27/2013
4.4	Form of Restricted Stock Unit Agreement under the Amended and Restated 2010 Equity Incentive Plan	10-K	001-35232	10.30	2/27/2013
4.5	2000 Stock Option/Stock Issuance Plan	S-1	333-173709	10.4	4/25/2011
4.6	Form of Stock Option Agreement under the 2000 Stock Option/Stock Issuance Plan	S-1	333-173709	10.5	4/25/2011
4.7	2012 Employee Stock Purchase Plan	10-K	001-35232	10.6	2/27/2013
4.8	Form of Subscription Agreement under 2012 Employee Stock Purchase Plan	S-1	333-173709	10.7	3/07/2012
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation				
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm				
23.2	Consent of EisnerAmper LLP, Independent Registered Public Accounting Firm				
23.3	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1 hereto)				
24.1	Power of Attorney (contained on signature page hereto)				

**Item 9. Undertakings.**

A. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*Provided, however,* that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Mateo, State of California, on May 16, 2013.

WAGWORKS, INC.

By: /s/ Joseph L. Jackson  
Joseph L. Jackson  
Chief Executive Officer and Director

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Joseph L. Jackson and Richard T. Green and each of them, as his true and lawful attorney in fact and agent with full power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney in fact, proxy and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney in fact, proxy and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Joseph L. Jackson		
Joseph L. Jackson	Chief Executive Officer and Director (Principal Executive Officer)	May 16, 2013
/s/ Richard T. Green		
Richard T. Green	Chief Financial Officer (Principal Financial and Accounting Officer)	May 16, 2013
/s/ Richard M. Berkeley		
Richard M. Berkeley	Director	May 16, 2013
/s/ Thomas A. Bevilacqua		
Thomas A. Bevilacqua	Director	May 16, 2013
/s/ Bruce G. Bodaken		
Bruce G. Bodaken	Director	May 16, 2013
/s/ Mariann Byerwalter		
Mariann Byerwalter	Director	May 16, 2013
/s/ Jerome D. Gramaglia		
	Director	May 16, 2013



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Jerome D. Gramaglia

/s/ John W. Larson

John W. Larson

Director

May 16, 2013

/s/ Edward C. Nafus

Edward C. Nafus

Director

May 16, 2013

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