

Workday, Inc.
Form S-8
October 12, 2012

As filed with the Securities and Exchange Commission on October 12, 2012

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

Under

The Securities Act of 1933

Workday, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

20-2480422
(I.R.S. Employer
Identification No.)

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6230 Stoneridge Mall Road

Pleasanton, California 94588

(925) 951-9000

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

2012 Equity Incentive Plan

2012 Employee Stock Purchase Plan

2005 Stock Plan, as amended

Non-Plan Stock Option Agreements

(Full title of plans)

Mark S. Peek, Chief Financial Officer

Workday, Inc.

6230 Stoneridge Mall Road

Pleasanton, California 94588

(925) 951-9000

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

Please send copies of all communications to:

Jeffrey R. Vetter, Esq.

Fenwick & West LLP

Silicon Valley Center

801 California Street

Mountain View, California 94041

(650) 988-8500

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 definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

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

CALCULATION OF REGISTRATION FEE

Title of Securities	Amount To Be Registered (1)	Proposed	Proposed	Amount of Registration Fee
		Offering Price Per Share	Aggregate Offering Price	
Class A Common Stock, \$0.001 par value per share				
To be issued under the 2012 Equity Incentive Plan	39,238,850(2)	\$28.00(3)	\$ 1,098,687,800	\$149,861
To be issued under the 2012 Employee Stock Purchase Plan	2,000,000(4)	\$23.80(5)	\$ 47,600,000	\$ 6,493
Outstanding under 2005 Stock Plan, as amended, and Non-Plan Stock Option Agreements	29,814,115(6)	(7)		
Class B Common Stock, \$0.001 par value per share				
Outstanding under 2005 Stock Plan, as amended, and Non-Plan Stock Option Agreements	29,814,115(8)	\$2.41(9)	\$ 71,852,017	\$ 9,801
TOTAL	100,867,080		\$1,218,139,817	\$166,155

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of the Registrant's Class A or Class B common stock that become issuable under the Registrant's 2012 Equity Incentive Plan (2012 Plan), 2012 Employee Purchase Plan (ESPP) and 2005 Stock Plan, as amended (2005 Plan), by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration that increases the number of the outstanding shares of the Registrant's Class A or Class B common stock.
- (2) Shares of Class A common stock reserved for issuance under the 2012 Plan consist of (a) 25,000,000 shares of Class A common stock reserved to be issued under the 2012 Plan and (b) 14,238,850 shares of Class A common stock previously reserved but unissued under the 2005 Plan that are now available for issuance under the 2012 Plan. To the extent outstanding awards under the 2005 Plan are forfeited or lapse unexercised, the shares of Class B common stock subject to such awards instead will be available for future issuance as Class A common stock under the 2012 Plan. See footnote 6 below.
- (3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act and based upon the initial public offering of the Registrant's Class A common stock for the Registrant's initial public offering pursuant to its Registration Statement on Form S-1 (File No. 333-183640) declared effective on October 11, 2012 (the Initial Public Offering Price).
- (4) Represents shares of Registrant's Class A common stock reserved for future issuance under the ESPP.
- (5) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act and based upon the Initial Public Offering Price, multiplied by 85%. Pursuant to the ESPP, the purchase price of a share of Class A common stock is 85% of the fair market value of the Registrant's common stock.
- (6) Represents shares of Registrant's Class A common stock reserved for issuance upon conversion of Class B common stock underlying stock options outstanding under the 2005 Plan and upon conversion of Class B common stock underlying stock options outstanding under non-plan stock option agreements (Non-Plan Agreements) as of the date of this Registration Statement. Any shares of Class B common stock that are subject to awards under the 2005 Plan, which are forfeited or lapse unexercised and would otherwise have been returned to the share reserve under the 2005 Plan, instead will be available for issuance as Class A common stock under the 2012 Plan. See footnote 2 above.
- (7) Pursuant to Rule 457(i) under the Securities Act, there is no fee associated with the registration of shares of Class A common stock issuable upon conversion of the shares of any Class B common stock (a convertible security) being registered under this Registration

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Statement because no additional consideration will be received in connection with the conversion of Class B common stock.

- (8) Represents shares of Class B common stock reserved for issuance pursuant to stock option awards outstanding under the 2005 Plan and pursuant to stock option awards outstanding under Non-Plan Agreements, as of the date of this Registration Statement. Any shares of Class B common stock that are subject to stock option awards under the 2005 Plan that are forfeited or lapse unexercised will be available for issuance as Class A common stock under the 2012 Plan. See footnote 2 above.
- (9) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act on the basis of the weighted average exercise price of \$2.41 per share of Class B common stock (rounded up to the nearest tenth).

PART I

Information Required in the Section 10(a) Prospectus

The information specified in this Part I is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (Securities Act). In accordance with the rules and regulations of the Securities and Exchange Commission (the Commission) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

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PART II

Information Required in the 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:

- (a) the Registrant's prospectus filed on October 15, 2012 pursuant to Rule 424(b) under the Securities Act relating to the Registration Statement on Form S-1, as amended (Registration No. 333-183640) (the "Form S-1"), which contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed; and
- (b) the description of the Registrant's Class A common stock contained in the Registrant's Registration Statement on Form 8-A (Registration No. 001-35680) filed with the Commission on October 3, 2012, including any amendments or reports filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents, except as to documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission. 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 in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 4. Description of Securities.

See the description of the Registrant's Class B common stock contained in the Registrant's prospectus filed on October 15, 2012 pursuant to Rule 424(b) under the Securities Act relating to the Registration Statement on Form S-1, as amended (File No. 333-183640).

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 court to award, or a corporation's board of directors to grant, indemnity to its directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

any breach of the director's duty of loyalty to the Registrant or its stockholders;

acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law;

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under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends, stock purchases or redemptions);
or

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any transaction from which the director derived an improper personal benefit.
As permitted by the Delaware General Corporation Law, the Registrant's restated bylaws provide that:

the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;

the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;

the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions; and

the rights conferred in the restated bylaws are not exclusive.

In addition, the Registrant has entered into indemnity agreements with each of its current directors and executive officers to provide these directors and executive officers with additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. The indemnification provisions in the Registrant's restated certificate of incorporation and restated bylaws and the indemnity agreements entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant carries directors' and officers' liability insurance.

In addition, certain of the Registrant's non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of the Registrant's board of directors.

See also the undertakings set out in response to Item 9 hereof.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.1	Restated Certificate of Incorporation of the Registrant, as currently in effect.	S-1/A	333-183640	3.3	10/1/2012	
4.2	Bylaws of the Registrant, as currently in effect.	S-1	333-183640	3.2	8/30/2012	
4.3	Amended and Restated Bylaws of the Registrant, to be effective upon closing of the Registrant's public offering.	S-1/A	333-183640	3.4	10/1/2012	
4.4	2005 Stock Plan, as amended, and forms of award agreements.	S-1	333-183640	10.2	8/30/2012	
4.5	2012 Equity Incentive Plan and forms of award agreements.	S-1	333-183640	10.3	8/30/2012	

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4.6	2012 Employee Stock Purchase Plan.	S-1	333-183640	10.4	8/30/2012	
4.7	Form of Non-Plan Stock Option Agreement.					X
4.8	Form of Registrant's Class A common stock certificate.	S-1/A	333-183640	4.1	10/1/2012	
4.9	Form of Registrant's Class B common stock certificate.					X
5.1	Opinion and Consent of Fenwick & West LLP.					X
23.1	Consent of Ernst & Young, LLP, independent registered public accounting firm.					X
23.2	Consent of Fenwick & West LLP (contained in Exhibit 5.01).					X
24.1	Power of Attorney (incorporated by reference to Page II-5 of this Registration Statement).					X

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;

(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 this 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; and

(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) above 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 Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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 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 Commission such indemnification is against public policy as expressed in the Securities 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 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Pleasanton, State of California, on this 12th day of October, 2012.

Workday, Inc.

By: /s/ Mark S. Peek
Mark S. Peek

Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned officers and directors of Workday, Inc., a Delaware corporation, do hereby constitute and appoint Aneel Bhusri, Mark S. Peek, and James P. Shaughnessy, and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms that all said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Signature	Title	Date
/s/ David A. Duffield	Co-Chief Executive Officer and Director	October 12, 2012
David A. Duffield	(Principal Executive Officer)	
/s/ Aneel Bhusri	Chairman and Co-Chief Executive Officer	October 12, 2012
Aneel Bhusri	(Principal Executive Officer)	
/s/ Mark S. Peek	Chief Financial Officer	October 12, 2012
Mark S. Peek	(Principal Financial and Accounting Officer)	
/s/ A. George (Skip) Battle	Director	October 12, 2012
A. George (Skip) Battle		
/s/ Christa Davies	Director	October 12, 2012
Christa Davies		

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/s/ Michael M. McNamara

Director

October 12, 2012

Michael M. McNamara

/s/ Scott D. Sandell

Director

October 12, 2012

Scott D. Sandell

/s/ George J. Still, Jr.

Director

October 12, 2012

George J. Still, Jr.

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