

GENERAC HOLDINGS INC.

Form S-8

August 07, 2014

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**As filed with the Securities and Exchange Commission on August 7, 2014**

**Registration No. 333-**

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

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**FORM S-8**

**REGISTRATION STATEMENT**

**UNDER THE SECURITIES ACT OF 1933**

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**Generac Holdings Inc.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**20-5654756**

(I.R.S. Employer Identification No.)

**Generac Holdings Inc.**

**S45 W29290 Hwy. 59**

**Waukesha, Wisconsin 53189**

(Address of Principal Executive Offices, Including Zip Code)

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**Generac Holdings Inc. Employee Stock Purchase Plan**

(Full Title of Plan)

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**Raj Kanuru, Esq.**

**General Counsel and Vice President**

**Generac Holdings Inc.**

**S45 W29290 Hwy. 59**

**Waukesha, Wisconsin 53189**

**(262) 544-4811**

(Name and Address, Including Zip Code,

and Telephone Number, Including Area Code, of Agent for Service)

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See the 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  Smaller reporting company   
 (Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

| <b>Title of Securities to be Registered</b> | <b>Amount to be Registered (1)</b> | <b>Proposed Maximum Offering Price Per Share (2)</b> | <b>Proposed Maximum Aggregate Offering Price (2)</b> | <b>Amount of Registration Fee</b> |
|---|------------------------------------|--|--|-----------------------------------|
| Common Stock, par value \$0.01 per share    | 3,000,000 shares                   | \$ 42.51   | \$ 127,530,000                                       | \$ 16.425.86                      |

The securities to be registered are issuable under the Generac Holdings Inc. Employee Stock Purchase Plan.

(1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall cover such additional securities as may be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h) of the Securities Act on the basis of the average of the high and low sales prices per share of the common stock, par value \$0.01 per share, of Generac Holdings Inc. as reported by the New York Stock Exchange on August 1, 2014.

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**EXPLANATORY NOTE**

This Registration Statement on Form S-8 (this “Registration Statement”) registers 3,000,000 shares of the common stock, par value \$0.01 per share (“Common Stock”), of Generac Holdings Inc. (the “Registrant”) that may be offered and sold under the Generac Holdings Inc. Employee Stock Purchase Plan (the “Plan”). The Registrant’s stockholders approved the Plan at the Registrant’s 2014 Annual Meeting of Stockholders on June 11, 2014.

**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 Securities and Exchange Commission (the “Commission”), except to the extent that any portion of such documents is “furnished” to the Commission:

The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2013;

The Registrant’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2014;

The Registrant’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2014;

The Registrant’s Current Reports on Form 8-K filed with the Commission on March 12, 2014, April 14, 2014, May 16, 2014 and June 11, 2014;

The description of the Registrant’s Common Stock contained in the Registrant’s Registration Statement on Form S-1 (Reg. No. 333-162590), which description is incorporated by reference into the Form 8-A filed with the Securities and Exchange Commission on February 8, 2010, pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and any amendment or report filed for the purpose of further updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents, except to the extent that any portion of such documents is "furnished" to the Commission.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in this Registration Statement, or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this Registration Statement, modifies or supersedes such prior statement. Any statement contained in this Registration Statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document that is or is deemed to be incorporated by reference in this Registration Statement modifies or supersedes such prior statement. Any 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.

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

Not applicable.

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

Section 145(a) of the Delaware General Corporation Law, or DGCL, provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees)), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Section 145(b) further provides that a corporation similarly may indemnify any such person serving in any such capacity who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or such other court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

The Registrant's amended and restated bylaws authorize the indemnification of its officers and directors, consistent with Section 145 of the DGCL, as amended. The Registrant has entered into indemnification agreements with each of its directors and executive officers. These agreements, among other things, require the Registrant to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of the Registrant, arising out of the person's services as a director or executive officer.

Reference is made to Section 102(b)(7) of the DGCL which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends or unlawful stock purchase or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

The Registrant maintains standard policies of insurance that provide coverage (i) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (ii) to the Registrant with respect to indemnification payments that it may make to such directors and officers.

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

Not applicable.



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**Item 8. Exhibits.**

**Exhibit No. Description**

- |      |   |
|------|---|
| 4.1  | Generac Holdings Inc. Employee Stock Purchase Plan, as amended and restated effective August 7, 2014. |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.                          |
| 24.1 | Power of Attorney (contained in the signature page hereto).   |

**Item 9. Undertakings.**

(a) The 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 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; 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) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in 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 the 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 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.

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(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.

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**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 Waukesha, State of Wisconsin, on this 7th day of August, 2014.

**GENERAC HOLDINGS  
INC.**

By: /s/ Aaron Jagdfeld  
Name: Aaron Jagdfeld  
Title: Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS THAT each person whose signature appears below constitutes and appoints Aaron Jagdfeld and York A. Ragen, and each of them with full power to act without the other, true and lawful attorneys-in-fact and agents, with the power of substitution and resubstitution in each of them, his true and lawful attorney-in-fact, with full power and authority, for the purpose of executing, in the name and on behalf of the undersigned as a director of Generac Holdings Inc., a Delaware corporation, any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, or their substitutes, and each of them full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agents or any of them, or their substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated as this 7<sup>th</sup> day of August, 2014.

**Signature**

**Title**

/s/ AARON JAGDFELD  
Aaron Jagdfeld

President, Chief Executive Officer and  
Director

|  |   |
|--|---|
| /s/ YORK A. RAGEN<br>York A. Ragen             | Chief Financial Officer and<br>Chief Accounting Officer |
| /s/ TODD ADAMS<br>Todd Adams                   | Director  |
| /s/ JOHN D. BOWLIN<br>John D. Bowlin           | Director<br>- -   |
| /s/ RALPH W. CASTNER<br>Ralph W. Castner       | Director  |
| /s/ ROBERT D. DIXON<br>Robert D. Dixon         | Director  |
| /s/ BARRY J. GOLDSTEIN<br>Barry J. Goldstein   | Director  |
| /s/ ANDREW J. LAMPEREUR<br>Andrew J. Lampereur | Director  |

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/s/BENNETT MORGAN Director  
Bennett Morgan

/s/ DAVID A. RAMON Director  
David A. Ramon

/s/ TIMOTHY WALSH Director  
Timothy Walsh

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**EXHIBIT INDEX**

**No. Description**

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