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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934**

**October 6, 2022
Date of Report (date of earliest event reported)**

INTEVAC, INC.

(Exact name of Registrant as specified in its charter)

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

0-26946
(Commission
File Number)

94-3125814
(IRS Employer
Identification Number)

**3560 Bassett Street
Santa Clara, CA 95054**
(Address of principal executive offices)

(408) 986-9888
(Registrant's telephone number, including area code)

N/A
(Former name or former address if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock (\$0.001 par value)	IVAC	The Nasdaq Stock Market LLC (Nasdaq) Global Select

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.*Employment Agreement with Director*

On October 6, 2022, Intevac, Inc. (the “Company”) entered into an at-will employment offer letter (the “Offer Letter”) with Mark Popovich, which sets forth the terms governing his employment in a non-executive officer role with the Company. Pursuant to the Offer Letter, Mr. Popovich’s initial annual base salary will be \$350,000, he will be eligible to participate in the Company’s Annual Incentive Plan, with an initial performance-based target bonus opportunity of 60% of his then-current base salary, and the Company will recommend that Mr. Popovich be granted (i) an award of 50,000 restricted stock units (“RSUs”) that will be scheduled to vest in equal annual installments over three years and (ii) an award of 41,300 performance-based RSUs (“PRSUs”) at target (82,600 PRSUs at maximum performance), which will vest, if at all, based on the same stock price hurdle metrics as the PRSUs described in the Company’s Current Report on [Form 8-K](#) filed with the Securities and Exchange Commission on May 19, 2022. Mr. Popovich’s RSU and PRSU awards will be subject to the terms, definitions and provisions of the Company’s 2020 Equity Incentive Plan and award agreements thereunder.

In addition, on October 6, 2022, the Company entered into a change in control agreement with Mr. Popovich. Pursuant to the terms of the change in control agreement, if within twelve months following a change in control (as such term is defined in the Company’s 2020 Equity Incentive Plan), the Company terminates Mr. Popovich without cause or if he resigns for good reason (as such terms are defined in the change in control agreement) (each, a “qualifying termination”), Mr. Popovich will receive (i) severance from the Company in the amount of six months of his then-existing base salary, payable in equal installments over a period of six months following his termination, and (ii) immediate vesting of each of his then-outstanding Company equity awards other than performance-based awards. The receipt of severance under the change in control agreement is contingent upon Mr. Popovich signing and not revoking a release of claims in favor of the Company. The change in control agreement provides that, in the event the severance payments and other benefits payable to Mr. Popovich constitute “parachute payments” under Section 280G of the U.S. Internal Revenue Code and would be subject to the applicable excise tax, then his severance and other benefits will be either (i) delivered in full or (ii) delivered to such lesser extent which would result in no portion of such benefits being subject to the excise tax, whichever results in the receipt by him on an after-tax basis of the greatest amount of benefits.

The foregoing description is qualified in its entirety by reference to the Offer Letter and the change in control agreement, copies of which are attached as Exhibit 10.1 and Exhibit 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.*Resignation of Director*

On October 6, 2022, Mark Popovich resigned from the Company’s Board of Directors, effective November 11, 2022. Mr. Popovich’s resignation is not based upon any disagreement with the Company on any matter relating to the Company’s operations, policies or practices.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Offer letter, effective as of October 6, 2022, between Intevac and Mark Popovich
10.2	Change in Control Agreement, effective as of October 6, 2022, between Intevac and Mark Popovich
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 12, 2022

INTEVAC, INC.

/s/ JAMES MONIZ

James Moniz

Executive Vice President, Finance and Administration,
Chief Financial Officer, Secretary and Treasurer



3560 Bassett Street, Santa Clara, CA 95054-2704

www.intevac.com

T 408 986 9888

F 408 727 5739

October 6, 2022

Mr. Mark Popovich

Dear Mark:

I am pleased to confirm our offer for the position of Vice President of Business Development reporting to Nigel Hunton, Chief Executive Officer and President. Your starting date will be October 10, 2022, and your base salary will be \$350,000 on an annualized basis. In addition, you are eligible to participate in Intevac's Incentive Program. You will be eligible to receive an annual target bonus of up to 60% of your then current Base Salary (the "**Bonus**"). To the extent that you or the Company exceed or fall short of the target performance, the actual bonus payment may be more or less than the target bonus. The achievement of your bonus will be based on the Company meeting its financial targets for Profitability and accomplishment of your Divisional/Individual MBOs.

As a material inducement to you joining Intevac CEO Nigel Hunton will make a recommendation to the Board of Directors that you be granted 50,000 RSUs of Intevac stock, which will vest over three years.

Additionally, as a material inducement to you for accepting employment with the Company, and subject to your continued employment on the grant date, the Company will recommend that you be granted an award of 41,300 Performance RSUs ("PRSU"), with up to a maximum grant of 82,600 PRSUs. The PRSUs will vest upon the achievement of certain Intevac share price levels, over the performance period starting on the grant date and ending on May 31, 2025, calculated on the average closing price of the Company's stock over a 30-day period, the "Company Stock Price Hurdle".

Performance of Target PRSU Awards Eligible to Vest

Company Stock Price Hurdle		
IVAC Stock Price	Shares	% of Target Vesting
Below \$6.00	0	0%
\$6.00	8,260	20%
\$7.00	12,390	30%
\$8.00	20,650	50%
\$9.00	20,650	50%
\$10.00	20,650	50%

October 6, 2022

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As a regular Intevac employee you will be eligible to participate in a benefits package, which includes medical/dental/vision/life/disability insurance, 401(k) plan, stock purchase plan, and educational reimbursement for approved courses. This package also provides for 10 paid holidays' each year and accrual of Personal Time-Off (PTO) at a rate of twenty (20) days per year at the inception of your employment.

Intevac employs its employees on an "at-will" basis, meaning that either you or the Company may terminate the employment relationship at any time, with or without cause and with or without notice. Should you join us, Intevac will employ you on an at-will basis and apply to you the same policies and procedures applicable to its employees generally. We may, in our discretion, establish other terms and conditions of your employment, and may modify any terms and conditions of employment at any time.

This offer of employment does not imply or give cause for any claim to employment tenure, rights, or benefits not stated herein or specifically provided for in writing hereafter. Either party to this agreement may terminate the agreement at any time for any reason or no reason. This at will nature of employment cannot be altered, except upon written agreement signed by the president of Intevac.

This offer is contingent on your execution of the Company's standard Proprietary Information and Inventions Agreement, which is attached. If you accept this offer, the terms described in this letter and the Proprietary Information and Inventions Agreement shall be the terms of your employment. No other promises, representations or terms have been agreed to by Intevac.

In order to comply with the Federal Immigration Reform Act, your employment pursuant to this offer is contingent on you providing the legally required proof of your identity and authorization to work in the United States.

We look forward to having you join the Intevac Team on Monday, October 10th. Please sign the enclosed copy in the space provided, execute the enclosed Proprietary Information Agreement and return to me.

Sincerely,

/s/ Nigel Hunton

Nigel Hunton

President/CEO

Intevac Inc.

I have read and accept this offer of employment:

/s/ Mark Popovich

Mark Popovich

October 6, 2022

Date

Change in Control Agreement

Intevac, Inc. (hereafter referred to as “Intevac” or the “Company”) employs you, Mark Popovich, and desires to provide certain benefits to you in the event of a Change in Control as described herein and your employment terminates thereafter under certain conditions. Accordingly, you and the Company agree as follows:

- 1.1 For purposes of this Change in Control Agreement (the “Agreement”), the term “Change in Control” has the meaning assigned to it in the Company’s 2020 Equity Incentive Plan.
- 1.2 Termination after a Change in Control. In the event that within twelve (12) months following a Change in Control, the Company terminates your employment without Cause (as defined below) or you resign for Good Reason (as defined below) (a “Change in Control Termination”), (a) the Company will provide you with severance in the amount of six (6) months of your then existing base salary, paid, less payroll deductions and all required withholdings, in equal installments on the Company’s normal payroll schedule over a period of six (6) months following your termination of employment with the Company, and (b) immediate vesting of each of your then-outstanding Company equity awards as to 100% of the then unvested number of shares subject to each such Company equity award; provided, however, that any Company equity award held by you that, at any time such Company equity award was outstanding, was subject to performance-based vesting, will instead be treated as provided in the award agreement related to such Company equity award. As a precondition of receiving the payments and benefits under this paragraph, you must, upon or following your separation from service, first sign and allow to become effective a general release of claims in favor of the Company in a form acceptable to the Company (the “Release”) and such Release must become effective and irrevocable no later than sixty (60) days following the Change in Control Termination (such deadline, the “Release Deadline”). If the Release does not become effective by the Release Deadline, or if you do not comply with the terms of the Release, you will forfeit any rights to severance payments or benefits under this Agreement. In no event will severance payments or benefits be paid or provided until the Release actually becomes effective. Notwithstanding the foregoing, your employment with the Company will not be considered to have terminated, and you shall not be entitled to any of the payments and benefits under this paragraph, if you simultaneously or with no break in service are rehired or become an employee of another Intevac Entity; for the avoidance of doubt, in connection with any such simultaneous rehire or transfer, the terms of this Section 1.2 with respect to the termination of your employment with the Company shall apply to your employment with Intevac or such Intevac Entity, as applicable.
- 1.3 Definition of “Cause”. For purposes of this Agreement, “Cause” shall mean the occurrence of one or more of the following: (a) your indictment or conviction of any felony or crime involving moral turpitude or dishonesty; (b) your participation in any fraud against the Company or its successor; (c) breach of your duties to the Company or its successor, including, without limitation, persistent unsatisfactory performance of job duties; (d) intentional damage to any property of the Company or its successor; (e) willful conduct that is demonstrably injurious to the Company or its successor, monetarily or otherwise; (f) breach of any agreement with the Company or its successor, including your Proprietary Information and Inventions Agreement; or (g) conduct by you that in the good faith and reasonable determination of the Company demonstrates gross unfitness to serve. Physical or mental disability or death shall not constitute Cause hereunder.

- 1.4 Definition of “Good Reason”. For purposes of this Agreement, your voluntary termination of employment with the company will be considered a termination for “Good Reason” if you resign your employment because one of the following events occurs without your consent: (a) a reduction of your then existing annual base salary by more than ten percent (10%), unless the then existing base salaries of other executive officers of the Company are accordingly reduced; (b) a material reduction in the package of benefits and incentives, taken as a whole, provided to you (not including raising of employee contributions to the extent of any cost increases imposed by third parties), except to the extent that such benefits and incentives of the other executive officers of the Company are similarly reduced; (c) assignment to you of any duties or any limitation of your responsibilities substantially inconsistent with your position, duties, responsibilities and status with the company immediately prior to the date of the Change in Control; or (d) relocation of the principal place of your employment to a location that is more than sixty (60) miles from your principal place of employment immediately prior to the date of the Change in Control. In order for an event to qualify as Good Reason, you must not resign without first providing the Company with written notice of the acts or omissions constituting the grounds for Good Reason and a reasonable cure period of fifteen (15) days following the date of such notice, and such grounds must not have been cured during such time.
- 1.5 Limitation on Payments. If any payment or benefit you would receive pursuant to a Change in Control from the Company or otherwise (“Payment”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then such Payment shall be equal to the Reduced Amount. The “Reduced Amount” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on the after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting “parachute payments” is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order: (i) first, any cash payments shall be reduced in reverse chronological order (that is, the cash payment owed on the latest date following the occurrence of the event triggering the Excise Tax will be the first cash payment to be reduced); (ii) next, any equity awards that were granted “contingent on a change in ownership or control” within the meaning of Section 280G of the Code shall be reduced (if two or more equity awards are granted on the same date, each equity award will be reduced on a pro-rata basis); (iii) next, any accelerated vesting of other equity awards shall be reduced in the reverse order of date of grant (i.e., the vesting of the most recently granted equity awards will be reduced first, and if more than one equity award was granted to you on the same date, all such awards will have their acceleration of vesting reduced pro rata); and (iv) finally, reduction of other employee benefits paid or provided to you in reverse chronological order (i.e., the benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first benefit to be reduced). In no event will you have any discretion with respect to the ordering of payment reductions

The Company or an accounting firm engaged by the Company, as determined in the sole discretion of the Company shall perform the calculations described above (the Company or accounting firm performing such calculations, the “Calculation Team”). The Company shall bear all expenses with respect to the determinations required to be made hereunder.

The Calculation Team engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a Payment is triggered (if requested at the time by you or the Company) or such other time as requested by you or the Company. If the Calculation Team determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish you and the Company with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the Calculation Team made hereunder shall be final, binding and conclusive upon you and the Company.

2.0 General Timing of Payments

2.1 Any severance payments and benefits under this Agreement will be paid on, or, in the case of installments, will not commence until the sixtieth (60th) day following your separation from service, or, if later, such time as required by Section 3.2 below; provided, however, that any acceleration of vesting of options and restricted stock will be provided on the Release effectiveness date. Except as required by Section 3.2 below, any installment payments or benefits that would have been made to you during the sixty (60) day period immediately following your separation from service but for the preceding sentence will be paid to you on the sixtieth (60th) day following your separation from service and the remaining payments shall be made as provided in the Agreement. In no event will you have discretion to determine the taxable year of payment of any severance payments or benefits.

3.0 Section 409A

3.1 Notwithstanding anything to the contrary in this Agreement, no Deferred Payments will be paid or otherwise provided until you have a “separation from service” from Intevac within the meaning of Section 409A. Similarly, no severance payment or benefit payable to you, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until you have a “separation from service” from Intevac within the meaning of Section 409A. In no event will you have discretion to determine the taxable year of payment of any Deferred Payments.

3.2 Notwithstanding anything to the contrary in this Agreement, if you are a “specified employee” within the meaning of Section 409A at the time of your separation from service from Intevac (other than due to death), then the Deferred Payments, if any, that are payable within the first six (6) months following your separation from service from Intevac, will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of your separation from service from Intevac. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if you die following your separation from service from Intevac, but before the six (6) month anniversary of such separation from service, then any payments delayed in accordance with this Section 3.2 will be payable in a lump sum as soon as administratively practicable after the date of your death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment, installment and benefit payable under this Agreement is intended to constitute a separate payment under Section 1.409A-2(b)(2) of the Treasury Regulations.

3.3 Any amount paid or benefit provided under this Agreement that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations will not constitute a Deferred Payment for purposes of this Agreement. Any amount paid or benefit provided under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute a Deferred Payment for purposes of this Agreement. Any payments or benefits due under this Agreement will be paid as provided under this Agreement, but in no event later than the last day of your second taxable year following your taxable year in which your separation from service from the Company occurs.

3.4 For purposes of this Agreement, the term “Section 409A” means Section 409A of the Code, and any final regulations and guidance thereunder and any applicable state law equivalent, as each may be amended or promulgated from time to time.

3.5 For purposes of this Agreement, “Deferred Payments” means any severance pay or benefits to be paid or provided to you pursuant to this Agreement and any other severance payments or separation benefits, that in each case, when considered together, are considered deferred compensation under Section 409A.

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- 3.6 For purposes of this Agreement “Section 409A Limit” means two (2) times the lesser of: (x) your annualized compensation based upon the annual rate of pay paid to you during your taxable year preceding your taxable year of your termination of employment as determined under, and with such adjustments as are set forth in, Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto, or (y) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which your employment is terminated.
- 3.7 The foregoing provisions are intended to comply with or be exempt from the requirements of Section 409A so that none of the payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be exempt or so comply. You and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition before actual payment to you under Section 409A. In no event will the Company or any successor have any liability or obligation to reimburse or indemnify, or hold you harmless for any taxes or costs that may be imposed on or incurred by you as a result of Section 409A.

4.0 **General Provisions**

- 4.1 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced in such jurisdiction so as to render it valid, legal and enforceable consistent with the intent of the parties insofar as Possible.
- 4.2 **Entire Agreement.** This Agreement, together with the Proprietary Information and Inventions Agreement, constitutes the entire and exclusive agreement between you and the Company, and it supersedes any prior agreement, promise, representation, or statement, written or otherwise, between you and the Company with regard to this subject matter. This Agreement is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in writing signed by you and a duly authorized officer of the Company.
- 4.3 **Successors and Assigns.** This Agreement is intended to bind and inure to the benefit of and be enforceable by you, the company and your and its respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your duties hereunder and you may not assign any of your rights hereunder without the written consent of the Company, which shall not be withheld unreasonably.
- 4.4 **Governing Law.** All questions concerning the construction, validity and interpretation of this Agreement will be governed by the law of the State of California as applied to contracts made and to be performed entirely within California.

[Remainder of Page Intentionally Left Blank]

To indicate your acceptance of the Company's offer of employment, please sign and date this Agreement and return the signed document to me.

Sincerely,

/s/ Nigel Hunton

Nigel Hunton
President/CEO
Intevac Inc.

Accepted and agreed:

/s/ Mark Popovich

Mark Popovich

October 6, 2022

Date