

SERVICESOURCE INTERNATIONAL, INC.

Form 8-K

January 16, 2019

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

Date of report (Date of earliest event reported): January 11, 2019

ServiceSource International, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35108
(Commission
File Number)

81-0578975
(IRS Employer
Identification No.)

717 17th Street, 5th Floor

Denver, Colorado 80202

(Address of principal executive offices, including zip code)

(720) 889-8500

(Registrant's telephone number, including area code)

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:

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))
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 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On January 11, 2019, the Board of Directors (the Board) of ServiceSource International, Inc. (the Company or ServiceSource) increased the size of the Board from seven to eight and appointed John R. Ferron to the Company's Board, effective immediately. Mr. Ferron's term will expire at the Company's 2019 annual meeting of stockholders, and he will serve as a member of the Company's Audit Committee.

Mr. Ferron will receive cash compensation as a non-employee director in accordance with the Company's director compensation program as described in the Company's proxy statement on Schedule 14A filed with the Securities and Exchange Commission on April 4, 2018. In addition, he will receive an initial grant of 75,000 restricted stock units (RSUs) and an award of stock options to purchase up to 25,000 shares of the Company's common stock. Both the RSUs and the stock options will vest over two years, with 50% of each award vesting on each of the first and second anniversaries of the grant date. Vesting of the awards will be subject to Mr. Ferron's continued service with the Company through each relevant date. The Company also entered into an indemnification agreement with Mr. Ferron in the same form as the Company's standard form indemnification agreement with its other directors.

The Board determined that Mr. Ferron is an independent director as defined by Rule 10A-3 promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act), and by the rules of the Nasdaq Stock Market. There are no arrangements or understandings between Mr. Ferron and any other person pursuant to which he was selected as a director, nor are there any transactions, or proposed transactions, to which ServiceSource was or is to be a party and in which Mr. Ferron had or will have a direct or indirect material interest that are required to be disclosed under Item 404(a) of Regulation S-K, nor are there any family relationships among Mr. Ferron and any other directors or officers of the Company.

Item 7.01 Regulation FD Disclosure.

On January 16, 2019, ServiceSource issued a press release announcing Mr. Ferron's appointment to the Board. The full text of the press release is furnished herewith as Exhibit 99.1 and is incorporated herein by reference.

The information contained in Item 7.01 of this Form 8-K and the exhibit attached hereto shall not be deemed filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
99.1	<u>Press release dated January 16, 2019.</u>

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: January 16, 2019

SERVICESOURCE INTERNATIONAL, INC.

By: /s/ Patricia Elias

Name: Patricia Elias

Title: Executive Vice President, General
Counsel

t Reports on Form 8-K as filed with the Commission on January 12, 2009, January 28, 2009 (as to Items 1.01, 2.01, 3.02, and 5.02), March 9, 2009, March 18, 2009 (as to Item 5.02), April 28, 2009 (as to Items 5.02 and 5.03), May 18, 2009, June 12, 2009, and October 20, 2009.

(c) The description of the Company's common stock set forth in Item 1 of its Registration Statement on Form 8-A filed with the SEC on December 26, 2000, and all amendments or reports filed for the purpose of updating such description.

All reports and other documents filed by the Company or the Exact Sciences Corporation 401(k) Plan pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) after the date hereof, and 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 part hereof from the date of filing of such reports and documents. The Company is not incorporating by reference any documents or portions thereof that are not considered to be filed with the SEC.

Any statement contained herein or in a document incorporated or deemed to be incorporated herein by reference 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 other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such earlier 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.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Company is incorporated under the laws of the State of Delaware. Section 145 (Section 145) of the Delaware General Corporation Law, as the same exists or may hereafter be amended (DGCL), provides, among other things, that a Delaware corporation may indemnify any persons who were, are or are threatened to be made, parties 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 such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was illegal.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who 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 or enterprise, against any liability asserted against him and incurred by him in any such capacity, arising out of his status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

The Company's certificate of incorporation provides that, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, directors of the Company shall not be personally liable to the Company or its stockholders for monetary damages for any breach of their fiduciary duty as directors except (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a know violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper impersonal benefit. In addition, the certificate of incorporation of the Company provides that the Company shall indemnify each 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, by reason of the fact that such person is or was, or has agreed to become, one of the Company's directors or officers or is or was serving, or has agreed to serve, at the Company's request as a director, officer or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against all expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding and any appeal therefrom, 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 Company, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

All of the Company's directors and officers are covered by insurance policies maintained by the Company against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made to the attached Exhibit Index, which is incorporated herein by reference.

In lieu of the opinion of counsel or determination letter contemplated by Item 601(b)(5) of Regulation S-K, the Registrant hereby confirms that it has submitted the Exact Sciences Corporation 401(k) Plan and undertakes that it will submit all amendments thereto to the Internal Revenue Service (the IRS) in a timely manner, and that it has made or will make all changes required by the IRS in order to qualify the plan under Section 401 of the Internal Review Code.

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 the 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 a prospectus filed with the Securities and Exchange Commission (the SEC) 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 this registration statement or any material change to such information in this 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 15(d) of the Securities 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 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 Securities Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities 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 SEC 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 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company 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 Madison, State of Wisconsin, on January 22, 2010.

EXACT SCIENCES CORPORATION

By */s/ Kevin T. Conroy*
Kevin T. Conroy
President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Kevin T. Conroy and Maneesh K. Arora his or her true and lawful attorneys-in-fact and agents, each acting alone, with full powers of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all parties, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, each acting alone, 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 attorneys-in-fact and agents, each acting alone, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the date indicated.

Signature	Capacity	Date
<i>/s/ Kevin T. Conroy</i> Kevin T. Conroy	President, Chief Executive Officer and Director (Principal Executive Officer)	January 22, 2010
<i>/s/ Maneesh Arora</i> Maneesh Arora	Senior Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	January 22, 2010

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/s/ Patrick J. Zenner Patrick J. Zenner	Director	January 22, 2010
/s/ James P. Connelly James P. Connelly	Director	January 22, 2010
/s/ Sally W. Crawford Sally W. Crawford	Director	January 22, 2010
/s/ Edwin M. Kania, Jr. Edwin M. Kania, Jr.	Director	January 22, 2010
/s/ Connie Mack, III Connie Mack, III	Director	January 22, 2010
/s/ Katherine Napier Katherine Napier	Director	January 22, 2010
/s/ Lance Willsey, MD Lance Willsey, MD	Director	January 22, 2010

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Pursuant to the requirements of the Securities Act of 1933, as amended, the administrator of the Exact Sciences Corporation 401(k) Plan has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Madison, State of Wisconsin, on January 22, 2010.

EXACT SCIENCES CORPORATION 401(k) PLAN

By: /s/ Maneesh Arora
Name: Maneesh Arora
Title: Senior Vice President and Chief Financial
Officer

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

EXHIBITS

Item 8

FORM S-8

REGISTRATION STATEMENT

EXACT SCIENCES CORPORATION

Commission File Number 0-11774

EXHIBIT INDEX

Exhibit Number	Description
4.1	Sixth Amended and Restated Certificate of Incorporation of the Registrant (previously filed as Exhibit 3.3 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
4.2	Amended and Restated By-Laws of the Registrant (previously filed as Exhibit 3.4 to our Registration Statement on Form S-1 (File No. 333-48812), which is incorporated herein by reference)
4.3	Exact Sciences Corporation 401(k) Plan, filed herewith
5	Opinion of K&L Gates LLP, filed herewith
23.1	Consent of Independent Registered Public Accounting Firm, filed herewith
23.2	Consent of K&L Gates LLP (contained in Exhibit 5), filed herewith
24	Power of Attorney (see pages 6 & 7)