EC 141/2026 · DECREE 13,173/2026 · MTE ORDINANCE 2,041/2026

5x2 week: what changes

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VEIRANO ADVOGADOS

5×2
two paid rest days per week

44h → 40h
weekly hours, keeping the 8-hour daily cap

No pay cut
shorter hours cannot reduce pay, directly or indirectly

What changes

Rest
Two 24-hour rest periods per week, one preferably on Sunday; they may be consecutive. Retail: 1 Sunday every 3 weeks; women: every other week.

Working hours
Drops from 44h to 42h and then 40h. Average hours are measured over the calendar month, including special schedules.

Pay
No nominal or proportional reduction, including wage floors. Schedules of up to 40h need not be reduced.

Deadlines and transition

Today
44-hour workweek.

On 12/16/2026
Second rest day and 42-hour workweek. 90-day "double visit" (warning-first) inspection period begins (art. 17).

On 12/16/2027
40-hour workweek and new double-visit period.

Other rules

» **Collective bargaining agreements lapse**
Clauses with hours above the cap or fewer than 2 rest days lose effect, including individual agreements (Article 13).

» **Exemption (Ordinance, art. 9)**
College degree and pay of at least 2.5 times the Social Security (RGPS) cap (12-month average if variable). The 2 rest days remain guaranteed. Voluntary time control or control under a CBA triggers all the rules.

INDIRECT COST INCREASE: WHAT THE ORDINANCE SET

220 → 210 → 200

Ordinance (article 10): divisor of 210 (42h) and 200 (40h), not deemed a pay raise. Employees already on 40h with a 200 divisor: no change.

R$ 10,000 salary: hourly rate from R$ 45.45 to R$ 50.00 (+10%); overtime hour from R$ 68.18 to R$ 75.00. Hourly and commission-based employees: unit rate adjusted.

DSR: 1/6, not 2/5

The 2 rest days are together worth 1 workday; the overtime impact on DSR is 1/6 of the weekly amount (art. 11).

10 overtime hours: before, R$ 681.82 + R$ 207.51 (7/23) = R$ 889.33; at 40h, R$ 750.00 + R$ 125.00 (1/6) = R$ 875.00. If it were 2/5, it would be R$ 1,050.00.

Option: build the paid weekly rest (DSR) into the hourly wage (+16.667%), itemized on the payslip; lump-sum ("complessivo") pay is prohibited (Article11, § 5).

Schedules and agreements to review

» **Continuous rotating shifts**
6h, unless a CBA provides otherwise, subject to the weekly cap and the 2 rest days (Article 7).

» **Rest-day offsetting**
Only via CBA: average of 2 per week in the month and at least 1 day off every 6 days.

» **Minimum days off**
Twice the days in the month ÷ 7, rounded up: 8 in February and 9 in other months.

» **12×36**
Time off in lieu or overtime if the monthly average exceeds the cap, as set by the CBA (Article 8).

» **Work on a rest day**
Work on either of the 2 rest days (including Saturday): 100% premium, unless a day off is granted in the same week (Article 5, § 6).

» **Hour bank**
Balance through 12/15/2026 follows the old rules; afterwards, the new limits apply (Article 13, § 5).

Open issues:
1. 1/6 fraction set by a sub-statutory act: risk of lawsuits claiming 2/5;
2. Decree vs. article 64 of the CLT, and limits on a sub-statutory act regulating the Constitution.

MTE ORDINANCE 2,041/2026

Schedules and offsetting

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Overtime and DSR

6 days
maximum consecutive work without a day off

1 month
to close the average of hours and days off

8 or 9 days off
monthly minimum: 8 in February and 9 in months with 29 to 31 days

Offsetting in the following month?

Rest days: no
The 2-rest-day average closes at the end of the calendar month; missing days off cannot roll over to the next month (Constitution, Article 7, § 2; Ordinance, Article 4).

Hours: not within the schedule
Average hours are measured over the calendar month, including special schedules (article 3).

Could the hour bank be a way out?
Monthly excess as overtime credited to an hour bank under a CBA (up to 1 year).

EMPLOYEES ALREADY ON 40H WITH A 200 DIVISOR (R$ 10,000 SALARY, 10 OVERTIME HOURS)

OT: R$ 75.00

Divisor and hourly wage (R$ 50.00) stay the same: weekday overtime does not increase. The more favorable divisor prevails.

Rest day worked (including Saturday), with no day off that week: 100%. 8h = R$ 800.00, vs. R$ 782.61 before (50% + DSR): +2.2%.

DSR: depends on the month

Example Nov/2026 (5 Sundays + 2 holidays): before, R$ 750 + R$ 228.26 (7/23) = R$ 978.26; at 1/6, R$ 875.00: −10.6%.

With 4 Sundays and no holidays, it costs more. E.g., Jul/2027: before, R$ 750 + R$ 111.11 (4/27) = R$ 861.11; at 1/6, R$ 875.00: +1.6%.

The 2nd rest day is mandatory: 40h over 6 days becomes 5 days of 8h. A more favorable collective norm prevails.

Other costs for the employer

- **Hourly and commission-based**
  Unit rate adjusted by the average of the 12 months before 12/16/2026 (Article 10).
- **Sundays**
  Retail: 1 every 3 weeks; others: preferably 1 every 4 (Article 5).
- **Vacation**
  May not start within the 2 days before a holiday or rest day (Article 4, § 5).
- **Health and safety**
  Review the PGR (risk management program); hazardous work: extended hours only on 12x36, with a CBA or authorization.
- **eSocial**
  Specific rules for reporting work schedules from 12/16/2026 to 12/15/2027 (Article 18).
- **Labor inspections**
  90-day double-visit period starting 12/16/2026 and 12/16/2027 (Article 17).

Open issues:

1. Offshore and schedules with cycles spanning two months?
2. Using the hour bank for schedule overruns may be challenged under Article 3.

Please feel free to reach out with any questions or if you need further information.

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